TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 623

YU CONG ENG AND CO LIAM, FOR THEMSELVES AND FOR THE BENEFIT OF OTHER PERSONS SIMILARLY SITUATED AND AFFECTED, PETITIONERS,

vs.

W. TRINIDAD, AS COLLECTOR OF INTERNAL REVENUE; EULOGIO P. REVILLA, AS FISCAL FOR THE CITY OF MANILA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED JULY 23, 1925

CERTIORARI GRANTED OCTOBER 19, 1925

(31,346)

Supreme Court of the United States

.....TERM.....

No.....

YU CONG ENG and CO LIAM, for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

VERSUS

W. TRINIDAD, as the Collector of Internal Revenue of the Philippine Islands, EULOGIO P. REVILLA, as the Fiscal of the City of Manila, and HON. PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila,

Respondents.

On petition for writ of Certiorari to the Supreme Court of the Philippine Islands

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The United States of America

PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

G. R. No. 20479—Concerning Petition for Certiorari and Prohibition.

YU CONG ENG and CO LIAM, for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

VERSUS

W. TRINIDAD, as the Collector of Internal Revenue of the Philippine Islands, EULOGIO P. REVILLA, as the Fiscal of the City of Manila, and HON. PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila,

Respondents.

(ORIGINAL JURISDICTION)

BE IT REMEMBERED that, on the dates respectively mentioned, the following proceedings were had in the above entitled case:

On the 7th day of March, 1923, the petitioners, by their attorneys, filed in the office of the clerk of

the Supreme Court, the following petition for prohibition:

(CAPTION AND TITLE OMITTED)

PETITION FOR CERTIORARI AND PROHIBITION.

COME NOW the petitioners by their undersigned counsel and respectfully represent to this Honorable Court:

I.

That they are of age and residents of the City of Manila.

II.

That the respondent W. Trinidad is the duly appointed, qualified and Acting Collector of Internal Revenue of the Philippine Islands with his office and residence in the City of Manila.

III.

That the respondent Eulogio P. Revilla is the duly appointed, qualified, and Acting Fiscal or prosecuting attorney of the City of Manila and a resident of the said city.

IV.

That the Honorable Pedro Concepcion is one of the duly appointed, qualified and acting judges of the Court of First Instance of the City of Manila and also a resident of said city.

V.

That on the 21st day of February, 1921 the Philippine Legislature enacted and approved Act No. 2972 in the following language:

"NO. 2972.—AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

SEC. 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.

SEC. 3. This Act shall take effect on November first, nineteen hundred and twenty-one.

Approved, February 21, 1921."

VI.

That the petitioner Yu Cong Eng is a Chinese merchant engaged in the lumber business at No. 696 Juan Luna, Manila; that he neither reads, writes nor understands the English or Spanish language or any local dialect; that he keeps the books of account of his business in Chinese characters; that by reason of his ignorance of the English and Spanish languages and of all local dialects he is unable to keep his books in any other language than his own; that even if he should employ a bookkeeper capable of keeping his books in the English or Spanish language, or in any local dialect, he would have no means of personally revising or ascertaining the contents or correctness of the books thus

kept; that the employment of such a bookkeeper, unless he should also be a linguist, would entail as a necessary consequence the employment of a translator or interpreter familiar with the Chinese language and the language or dialect in which such books might be kept in order to enable the petitioner Yu Cong Eng to ascertain by hearsay the contents thereof; that in the event of being compelled to employ such a bookkeeper and translator or interpreter, the petitioner Yu Cong Eng would then be completely at the mercy of such employees who might not only cheat and defraud him of the proceeds of his business, but involve him in civil or criminal liability in the conduct of his business; that under the provisions of said Act No. 2972 the petitioner Yu Cong Eng is prohibited from even keeping a duplicate set of accounts in his own language and would, in the event of the enforcement of said law be compelled to remain in total ignorance of the status of his business; that for the reasons stated the enforcement of said Act would drive the petitioner Yu Cong Eng and the many other Chinese merchants in the Philippines, who are in like circumstances, out of business.

VII.

That the petitioner Co Liam is a chinaman and conducts a small general merchandise business, commonly known in the Philippines as a Chinese tienda at No. 364 Calle Santo Cristo, Manila; that he carries a stock of goods of about P10,000.00; that his sales taxes amount to from P40.00 to P60.00 per quarter; that he neither reads, writes, nor understands the English or Spanish language, or any local dialect; that he keeps the books of account of his small business in Chinese (which is the only language known to him) without the assistance of a bookkeeper; that he has

been losing money for sometime in the operation of his business, but that even in the most prosperous times the profits of his small business could never be sufficient to justify the employment of a Filipino bookkeeper or a bookkeeper of any other nationality capable of keeping his books in English, Spanish or any local dialect; that even if he could afford to employ such a bookkeeper, he would have no means of personally revising or ascertaining the contents or correctness of the books thus kept; that the employment of such a bookkeeper, unless he should also be a linguist, would entail as a necessary consequence, the employment of a translator or interpreter, familiar with the Chinese language, and the language or dialect in which such books might be kept, in order to enable the petitioner Co Liam to ascertain by hearsay the contents thereof; that in the event of being compelled to employ such a bookkeeper and translator or interpreter, the petitioner Co Liam would then be completely at the mercy of such employees, who might not only cheat and defraud him of the proceeds of his business, but involve him in civil or criminal liability in the conduct of his business; that under the provisions of said Act 2972 the petitioner Co Liam is prohibited from even keeping a duplicate set of books or accounts in his own language, and would in the event of the enforcement of said law, be compelled to remain in total ignorance of the status of his business; that for the reasons stated the enforcement of said act would drive the petitioner and many other Chinese merchants or tienda keepers in the Philippines who are in like circumstance out of business.

VIII.

That the respondent Collector of Internal Revenue in his capacity as such on the 2nd day of March, 1923 inspect-

ed and seized the account books of the petitioner Yu Cong Eng, which are in the Chinese language, informed the respondent City Fiscal of the failure of the petitioner Yu Cong Eng to keep his said account books in the English or Spanish language, or in any native dialect, and wrongfully and unlawfully recommended the prosecution of the petitioner Yu Cong Eng for the violation of said Law No. 2972; that as a result of said information and recommendation, the respondent City Fiscal wrongfully and unlawfully drafted, signed, and filed a criminal complaint before the respondent the Honorable Pedro Concepcion as Judge of the Court of First Instance of the City of Manila against the petitioner Yu Cong Eng, charging him with the violation of said Law No. 2972, a copy of which criminal complaint marked Exhibit "A" for identification is attached hereto and made a part of this petition; that as a result of the filing of said criminal complaint, the respondent Honorable Pedro Concepcion as Judge of said Court of First Instance of the City of Manila wrongfully and unlawfully issued a warrant for the arrest of the peaitioner Yu Cong Eng and caused him to be arrested thereunder and will, unless restrained and prohibited by this Honorable Court proceed to try and condemn and punish the petitioner Yu Cong Eng for the violation of said Law No. 2972.

IX.

That the said respondent Collector of Internal Revenue, said Fiscal of Manila, and the said respondent Judge of the Court of First Instance threaten to and will, unless restrained and prohibited by this Honorable Court, cause all of the other said Chinese merchants to be arrested, prosecuted and convicted under said Act No. 2972, as shown by a letter from the said respondent Collector of Internal

Revenue to the said respondent Fiscal of Manila published in the Daily Bulletin of March 2nd, 1923, a copy of which publication marked Exhibit "B" is attached hereto and made a part of this petition.

X.

That there are approximately 12,000 other Chinese merchants in the Philippine Islands of whom about three thousand are residents of and engaged in mercantile pursuits for profit in the City of Manila, and who are and will be similarly affected by said Act No. 2972 and the threatened criminal prosecutions thereunder; that the subject matter of the present action is one of common and general interest to all the other said Chinese merchants thus similarly situated and by reason of their great number it is impracticable to bring them all before the Court and for that reason the petitioners bring this action for the benefit of themselves and of all other Chinese merchants similarly and affected as aforesaid.

XI.

That of all nationalities there are altogether about 85,000 merchants in the Philippine Islands; that of this number about 71,000 are Filipinos; that of the remaining 14,000 about 1,500 are of either American, Spanish, or British nationality, and of the remaining 12,500 approximately 12,000 are Chinese; that the aggregate business transacted by the said 12,000 Chinese merchants represents more than 60% of the total business done by all the merchants in the Philippine Islands; that for the reason stated the burden of said Act No. 2972 is imposed almost exclusively upon said 12,000 Chinese merchants, including your petitioners.

XII.

That not to exceed 1% of the Chinese merchants in the Philippine Islands understand English, Spanish or any local dialect sufficiently well to be able to keep or revise their own books of account in any of those languages, and not to exceed 10% of said merchants have even a working knowledge of any of said languages such as would enable them to in any manner inform themselves as to the status of books of account kept in said languages, except by means of translators or interpreters; that the profits of the business of from one-third to one-half of said Chinese merchants are so small that they would be unable to afford the employment of a foreign bookkeeper or of a translator or interpreter familiar with their own language and with that in which their books of account might be kept; that for the reasons stated the enforcement of said Law would drive from one-third to one-half of the said Chinese merchants out of business, and would cause great and irreparable damage to the business of the remainder.

XIII.

That the said 12,000 Chinese merchants as shown by the records of the Internal Revenue Department, presided over by the respondent W. Trinidad, now pay and for several years last past have been paying more than 60% of the taxes levied on the total mercantile transactions of the Philippine Islands, thereby conclusively demonstrating that the said Chinese merchants faithfully and honestly record their business transactions in their own language, and that the respondent Collector of Internal Revenue and his agents and inspectors are, and have at all times been able to fully

inform themselves from the books of said Chinese merchants thus kept in their own language, of all the business transacted by them; for the reasons stated said Act No. 2972 is a wholly unnecessary burden upon the said Chinese merchants.

XIV.

That said Law No. 2972 is unjust and without precedent in the United States or in any other country where the Chinese merchant is doing business, as shown by the resolutions adopted and signed by the principal business houses in the City of Manila, the American Chamber of Commerce of China; the American Chamber of Commerce of Tientsin; the Executive Committee of the Foreign Trade Bureau of the Seattle Chamber of Commerce; the Seattle Chamber of Commerce asd Commercial Club; the Portland Chamber of Commerce; the Foreign Trade Committee of the San Francisco Chamber of Commerce, and the Merchants Association of New York, copies of which are respectively marked Exhibits "C", "D", "E", "F", "G", "H", "I", and "J" and attached hereto as a part of this petition.

XV.

That said Act No. 2972 is unconstitutional and void in that it is wholly unreasonable and unnecessary as an exercise of police power; in that it deprives your petitioners and all other Chinese merchants in the Philippines of their natural liberty to employ thir own language in the transaction of their business without due process of law; in that it deprives your petitioners and all other Chinese merchants in the Philippines of their property without due process of law; and in that it is discriminatory, amounts to class legisla-

tion, and denies your petitioners and said other Chinese merchants the equal protection of the law, in violation of the provisions of the Act of Congress of August 29, 1916, known as the Philippine Autonomy Act or the Jones Bill.

XVI.

That in instituting, entertaining, and proceeding with the prosecution of said criminal action against the petitioner Yu Cong Eng, and in otherwise enforcing and threatening to enforce said law No. 2972, as hereinbefore set forth, said respondents are acting without and in excess of their jurisdiction; that the enforcement of said Law No. 2972 will cause multitudinous and persecuting criminal prosecutions, and the prosecution of said criminal action against the petitioner Yu Cong Eng, and the threatened institution and prosecutions of similar criminal actions against your potitioner Co Liam and other Chinese merchants of the Philippine Islands is causing, and will, unless restrained and prohibited by this Honorable Court continue to cause your petitioners, and all of the other Chinese merchants of the Philippine Islands great and irreparable disturbance and injury in their business and property rights and interests, and for which they have no other plain, speedy and adequate remedy in the ordinary course (courts) of law by bill of exceptions, appeal, or otherwise.

XVII.

That the right of the petitioner Yu Cong Eng to defend and appeal if convicted in the said criminal action already filed against him, or in any succeeding similar criminal action which may be instituted against him, and the right of the petitioner Co Liam, and of each and all of the

other Chinese merchants of the Philippines to defend, and in the event of conviction to appeal to the Supreme Court, is an entirely inadequate remedy for the reason that similar prosecutions are threatened and may and will be instituted for each new entry or daily or weekly transaction recorded in their books of account in the Chinese language, and the threats and fear of repeated prosecutions and of the imposition of the severe punishment prescribed for the violation of said Law No. 2972, would and will compel your petitioners and many other of said Chinese merchants to discontinue business or to comply with the provisions of said Law to their great and irreparable injury.

WHEREFORE, your petitioners pray judgment: (a) declaring said Law No. 2972 unconstitutional and void; (b) granting an order against the respondents and each of them in conformity with Sections 514 and 516 of the Code of Civil Procedure in relation with Sections 217 and 226 of the same Code, to absolutely desist and refrain from further action in said criminal cause against the petitioner Yu Cong Eng and from instituting or prosecuting any other criminal actions under said Law No. 2972.

Your petitioners further pray that pending the determination of this petition, a preliminary injunction issue in conformity with Section 517 of the Code of Civil Procedure, enjoining the respondents and each of them and their agents or employees from proceeding further with the said criminal action against the petitioner Yu Cong Eng, or from instituting or prosecuting any other criminal action under said Law No. 2972.

Your petitioners further pray that the proceedings herein be expedited by order of this Honorable Court, li-

miting the time to answer or demur of respondents to ten days after citation.

Manila, P. I., March 7, 1923.

Respectfully submitted,

GABRIEL LA-O, PALMA & LEUTERIO
and
GIBBS & MCDONOUGH

By (Sgd.) A. D. GIBBS
Attorneys for Petitioners

302 Roxas Bldg., Manila

CITY OF MANILA
PHILIPPINE ISLANDS } ss.

YU CONG ENG being first duly sworn deposes and says:

That he is one of the petitioners in the above entitled action; that the foregoing petition has been read and interpreted to him; that he knows the contents thereof, and that the facts therein stated are true to the best of his knowledge and belief.

(Sgd.) YU CONG ENG

Subscribed and sworn to before me this 7th day of March, 1923, affiant exhibiting Cedula No. F-2534, issued at the City of Manila, P. I., on the 2nd day of January, 1923.

(Sgd.) CHAS. A. MCDONOUGH
Notary Public

My commission expires on December 31, 1924.

Doc. No. 81
Page No. 50
Not. Reg. for 1923
Book II

EXHIBIT A

UNITED STATES OF AMERICA

PHILIPPINE ISLANDS

IN THE COURT OF FIRST INSTANCE OF MANILA

NINTH JUDICIAL DISTRICT

THE PEOPLE OF THE PHILIPPINE ISLANDS, Complainant, *versus* YU CONG ENG, Accused,	COMPLAINT, Violation of the Accounting Law. No. 25551.

The undersigned accuses Yu Cong Eng of the violation of Act No. 2972 of the Philippine Legislature, committed as follows:

That on or about and during the time included between the 1st of January and the 27th of February, 1923, both dates included, the said accused was engaged in commerce for the purpose of profit in the City of Manila, Philippine Islands, having for this purpose an establishment at No. 696 Juan Luna street, district of Binondo of said city and in the exercise and development of his business the said accused, wilfully, illegally, criminally and fraudulently kept and caused to be kept the books of account of his said business corresponding to said period of time, solely in Chinese instead of keeping them or causing them to be kept in English, Spanish or any local dialect, thereby hindering and obstructing the authorized agents and representatives of the Go-

vernment of the Philippine Islands and of the City of Manila in the examination and revision of the said books of account and obstructing in this manner, the ascertainment and determination of the entire amount which said accused owed, owes or shall owe for licenses, permits, taxes and contributions.

In violation of the law.

ALFONSO FELIX
Assitant Fiscal

Subscribed and sworn to before me this 7th day of March, 1923, in the City of Manila, Philippine Islands, by Alfonso Felix, Assistant Fiscal of the City of Manila.

(Sgd.) PEDRO CONCEPCION
Judge, Court of First Instance

A preliminary investigation has been made in this case under my direction and witnesses examined under oath in accordance with the provisions of Sec. 2465 of Act No. 2711 of the Philippine Legislature.

ALFONSO FELIX
Assistant Fiscal

Subscribed and sworn to before me this 7th day of March, 1923, in the City of Manila, Philippine Islands, by Alfonso Felix, Assistant Fiscal of the City of Manila.

(Sgd.) PEDRO CONCEPCION
Judge, Court of First Instance

WITNESSES:

Sy Siangco Internal Revenue
Juan Evaristo Internal Revenue
Bond recommended ₱2,000.00

EXHIBIT B

MANILA DAILY BULLETIN

Manila, P. I., Friday, March 2, 1923.

"I have the honor to inform you that Yu Cong Eng, a Chinese merchant doing business at 696 Juan Luna, Manila, has violated the provisions of section 1 of Act No. 2972 of the Philippine Legislature which went into effect on January 1 of the present calender year, penalized under section 2 of the same Act, by keeping his books of account from January 1, to February 27, 1923, in Chinese and not in English, Spanish, or any native dialects as required by law."

In the letter quoted above Collector of Internal Revenue Trinidad recommends the first prosecution under the bookeeping law, but it is understood that more such recommendations will follow wherever it is found that the law is being violated.

The collector stated yesterday that the Yu Cong Eng case is not asked to be filed as a test case, to determine the constitutionality of the law; he said that every violation encountered will be dealt with similarly.

EXHIBIT C

RESOLUTION

WHEREAS, the undersigned merchants, doing business in the Philippine Islands, consider that a certain law recently passed by the Legislature of the Philippine Islands and approved by ex-Governor-General Harrison, known as Act No. 2972, and which makes it illegal after a certain date therein mentioned for any person, company, firm, or corporation engaged in business in the Philippine Islands to

keep their books of account in a language other than English, Spanish, or a native dialect, and providing heavy penalties for violations thereof, is very prejudicial to the Chinese community; and

WHEREAS, the business and commerce of the Philippine Islands are largely conducted by Chinese merchants, and a law like the one under consideration, which, if the practicability of its enforcement be assumed, would necessitate the Chinese giving up their business establishments, would vitally affect the economic situation of trade in the Islands and react in an important way most unfavorable upon all merchants and business of every kind in the country, and the undersigned accordingly conceive that they have a proper and direct interest, aside from other considerations, in having said Act No. 2972, repealed; and

WHEREAS, the law will work unnecessary hardship on the Chinese merchants by putting them to extra expense for the employment of bookkeepers using one of the aforesaid languages; and

WHEREAS, most of the Chinese merchants can neither speak, read, nor write any of the languages prescribed as aforesaid, and, consequently, would be unable to direct their bookkeepers or examine their books for themselves; and in view of the large number of Chinese merchants resident in the Philippine Islands and the relative scarcity of competent bookkeepers, particularly those having both the requisite bookkeeping ability and the ability to translate into Chinese, it will be absolutely impracticable for the Chinese merchants to comply with the terms of the aforesaid law, be they ever so willing to do so; and

WHEREAS, the enforcement of the said law will deprive a great number of the Chinese people of their means of livelihood and will thus be contrary to the fundamental ideas of justice and fair play; and

WHEREAS, the law is wholly unnecessary in nature, its enactment not having been heard of in any country than the Philippine Islands; and

WHEREAS, the Islands are just passing through one of the most acute financial crises in their history, and the enforcement of such a law will augment the severity of the economic depression on account of its detrimental effects on the local Chinese merchants; and

WHEREAS, the Chinese people have contributed no small part in the economic development of the Philippine Islands and in our dealings with them we have found them to be honest, reliable, and public-spirited; and

WHEREAS, for the aforesaid reasons and other reasons too apparent to be set forth herein, we deem this law highly unwise, extremely unjust, utterly impracticable of enforcement, greatly inconvenient for all concerned, absolutely unnecessary, and its early repeal a matter of simple justice and expediency; therefore, be it

RESOLVED, By the undersigned firms representing several nationalities other than Chinese, to express, and we do hereby express, our full concurrence with the just and reasonable protest of the Chinese colony against the enforcement of this law; and be it further

RESOLVED, That copies of this resolution be sent to the Philippine Legislature, His Excellency the Governor-General, the Congress of the United States, and the President; and that the contents hereof be made known to the Filipino and American public, to the end that they cooperate with the Chinese colony to secure the repeal of this anomalous law.

Signed:

Pacific Commercial Co.
By H. B. Bond.

Getz Bros. & Co. of the Orient, Ltd.,
By H. M. Weiss, *Branch Manager.*

Standard Oil Co. of New York,
By J. Maddocks.

Wise & Co.,
R. E. Humphreys, *Pres.*

Lutz & Zuellig.
F. E. Zuellig, *member of firm.*

Per pro Mitsui Bussan Kaisha, Ltd.,
F. Funatsu, *Mgr.*

W. H. Anderson & Co
W. H. Reynolds, *Vice-Pres.*

Insular Lumber Co.,
C. C. Quackenbush, *Asst. Manager.*

Armour & Co.,
By C. D. Evans.

I. Beck, Inc.,
A. Nelson Thomas, *Mgr.*

Lambert Sales Company,
C. H. Cady, *Mgr.*

Vacuum Oil Company,
Ray W. Berdeau, *Mgr., Manila.*

W. F. Stevenson & Co., Ltd.,
By R. Toovey.

For Warner Barnes & Co., Ltd.,
J. T. Figueras.

Henry W. Peabody & Co.,
B. M. Bryan.

Smith, Bell & Co., Ltd.,
H. T. Fox, *President.*

For Findlay Richardson & Co., Ltd.,
J. M. Maitland, *Dir.*

Erlanger & Galinger, Inc.,
By S. Feldstein.

Juan Ysmael & Co., Inc.,
By Felipe Ysmael, *Cashier.*

Connell Bros. Co.,
Per pro C. Orton.

Babcock & Templeton, Inc.,
W. R. Babcock.

Asia Banking Corporation,
H. J. Belden, *Mgr.*

J. R. Redfern & Co., Ltd.,
G. C. Hunter, *Vice-President.*

For London & Scottish Assn. Corp., Ltd.,
G. C. Hunter, *Agent.*

Hike Shoe Palace,
T. G. Henderson, *Mgr.*

Hashim Franklin Car Co.,
E. A. Aced, *Pres. and Manager.*

The Admiral Line,
(Pacific Steamship Co.)
J. B. Armstrong.

The Hashim Com'l & Trading Co., Ltd.,
By A. T. Hashim, *Pres. & Manager.*

Struthers & Dixon, Inc.,
By J. T. Kinney.

Squires Bingham Co.,
C. D. Squires, *Sec. and Treas.*

U. S. Paper & Hdwr. Co., Inc.
B. W. Jarck, *Vice-President.*

Manila Button Factory, Inc.,
By H. Scharnberg, *President.*

Ker & Co.

Cotton Neill Engineer & Machy. Co.,
D. M. Sample, *Mgr.*

H. E. Heacock & Co.
S. F. Gaches, *Pres.*

Forbes Munn & Co., Ltd.,
Y. R. Selkirk, *Mgr.*

La Fabrica de Cerveza de San Miguel (San Miguel Brewery),
Por Antonio Brias, *Gen. Mgr.*

Ayala y Cia.,
A. Melian.

Ed. A. Keller & Co., Ltd.,
Ed. A. Keller, *Mgr.*

MacLeod & Co., Inc.,
By H. E. Price, *Agent.*

Union Ins. Soc. of Canton, Ltd.,

Toyo Kisen Kaisha,
C. L. Goodrich.

China, Japan & S. A. Trading Co.,
A. S. Guttridge, *Mgr.*

The Cooper Company,
I. B. Findlay, *Asst. Gen. Mgr.*

Yangco, Rosentock & Co., Inc.,
C. W. Rosentock. *V. P. & G. M.*

The McCullough Printing Co.
F. H. Stevens, *Pres.*

The Auto Supply Co.
W. W. Weston, *Mgr.*

Denniston, Inc.
J. C. West, *Asst. Mgr.*

For the International Banking Corp.,
S. Williams, *Mgr.*

Hanson & Orth.

Willitts & Patterson, Ltd.,
G. C. Arnold, *Pres.*

Philippine-American Drug Company,
(Successors to Botica Boie, Co.)
Roy H. Springer.

pp. Levy Hermanos,
Leon Dreyfus.

Philippine Education Co., Inc.,
H. J. Hazelton, *Secy-Treas.*

Camera Supply Co.,
J. C. Cottinger.

Colorado Mining Co.,
H. B. McCoy.

The Robert Dollar Company,
Victor C. Hall.

Pacific Mail S. S. Co.
E. J. Brown, *Acting Agent.*

Walter E. Olsen & Co.,
L. McCall, *Vice-Pres.*

C. M. Cotterman & Co., Inc.,
C. M. Cotterman, *Pres.*

W. Solomon.

The Globe Drug Stores,
P. W. Ruston,
B. E. Green.

C. Alkan, Inc.,
P. Sintzenich.

Englebert & Muñoz,
Jose Muñoz y Lopez.

Clark & Co.,
G. T. Merrman, *Sec-Treas.*

The St. Louis D. G. Stores,
A. Ortiz, *Vice-Pres.*

Singer Sewing Machine Co.,
G. E. Brewster.

Commercial Pacific Cable Co., P. J. Harwood, *Superintendent.*

Laing & Wright,
F. C. Laing.

Atkins, Kroll & Co.,
J. G. Jefferys, *Manager.*

Alhambra Cigar and Cigarette Mfg. Co.,

Geo. Borgfeldt & Co.,
Fred. E. Krieghoff, *Accountant.*

Monarch Trading Co., Inc.,
By J. E. Harris, Jr., *Pres.*

John Rothschild & Co.,
G. P. Sorensen, *Resident Mgr.*

Por El Meridian,
J. B. Lammoglia.

Norton & Harrison Co.,
F. C. Hagedorn, *Vice-Pres.*

Christenson, Hanify & Weatherwax,
C. P. Ladd.

American Express Co.
W. D. Inman.

Clarke & Larkin,
W. W. Larkin.

Philippine Refining Corporation,
Fred. A. Leas, *Manager.*

The Caswell Import Co., Inc.,
T. Ebsen, *Manager.*

M. J. Ossorio.

The Eastern Extension, Australasia and China Telegraph Company, Limited,
F. A. Betts, *Superintendent.*

The Bank of the Philippine Islands,

Juan de Ormaechea, *Vice-President.*

For the Yokohama Specie Bank, Limited,
T. Kasuya, *Mgr.*

The Koster Company.
By W. N. Chatfield.

Cooperative Agricola de Filipinas,
Jose Ventura, *Manager.*

P. P. Neuss, Hesslein & Co..
A. G. Kenff.

Electrical Supply Co., Inc.,

Montgomery Ward & Co.,
75 Escolta,
By J. F. Quinn.

Luis Xiques.
Luis Ziques.

Purkiss & Herber.
By G. G. Purkiss.

Levy & Blumm, Inc.,
Angel P. Adia, *Secretary.*

J. P. Heilbronn Co..
By Amos G. Bellis. *Treasurer.*

Ohta Development Co.,
By C. Hagawara, *Manager.*

Gibson Furniture Company, Inc.,
W. F. Daland, *Pres. and Treasurer.*

The Island Trading Co., Inc.,
By M. Goldenberg, *Manager.*

Cooper Coate & Casey D. G. Co.,
Per Howard Hastings.

S. E. Diaz & Co., Inc.,
S. E. Diaz, *Pres.* & *Gen'l Manager.*

Garcia Bosque, Pomar & Cia.,
Sucesores de la Vda. de E. Bota.
G. Garcia Bosque.

Martin Vaguedez, of Cranston Engineering Co.,

Thurlow & Co., Inc.,
By R. W. Thurlow.

Lime Kilns, Inc.,
By W. C. Taylor.

Rubio Bros.,
By Jose Rubio.

Harry E. Keller Electric Co., Inc.,
Por Harry E. Keeler, *President.*

Brias Roxas, Inc.
M. Brias, *Asst. Mgr.*

E. Viegelmann & Co., Inc.,
By Wilhelm Jarck, *Vice-Pres.*

Manila Tire & Rubber Co.,
D. M. Burchfield, *Mgr.*

Milton E. Springer Co.,
Milton E. Springer, *Pres.*

Los Angeles Pacific Nav. Co.,
J. R. Wilson, *Gen. Agt.*

J. R. Wilson, Inc.,
By J. R. Wilson.

Frank & Co., Inc.,
G. Frank.

International Com. Co.,
H. H. Buck.

Flecha Point Lumber Co.,
G. E. Carpender, *Pres.*

Muller, MacLean & Co., Inc.,
H. H. Sage, *Agent.*

General Supply Co.,
S. Thomas, *Gen. Mgr.*

Muller & Phipps (Manila) Ltd.,
John Meyer, *Mgr.*

Welch, Fairchild & Co., Ltd.,
G. G. Gordon.

Manila Commercial Co.,
By Antonio Gimenez, *Manager.*

Frank Waterhouse & Co.,
A. G. Henderson, *Local Manager.*

La Insular, Loan Office and Jewelry Stores,
Juan Javier, S. en C.
Juan Javier, *Manager.*

EXHIBIT D

RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE, AMERICAN CHAMBER OF COMMERCE, APRIL 12, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal, after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands, to keep their books of account in languages other than English, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of merchandise throughout the Islands; and

WHEREAS, many, and probably the greater part, of these industrious Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be it unanimously

RESOLVED, That we, the American Chamber of Commerce of China, give our support to the attached protest of the Chinese General Chamber of Commerce, Shanghai, in the belief that the omission of the Chinese language from the above mentioned law is an unfortunate oversight and

that either this omission should be promptly remedied by amendment or the law repealed.

AMERICAN CHAMBER OF COMMERCE OF CHINA,
(Signed) W. H. CHAPMAN, *Secretary.*

EXHIBIT E

RESOLUTION PASSED BY THE AMERICAN CHAMBER OF COMMERCE AT TIENTSIN, CHINA, MAY 12, 1921.

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of merchandise throughout the Islands; and

WHEREAS, many, and probably the greater part, of these industrious Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be it unanimously

RESOLVED, That we, The American Chamber of Commerce in Tientsin, give our support to the protest of the Chinese Chamber of Commerce of Tientsin in the belief that the omission of the Chinese language from the above-mentioned law is an unfortunate oversight and that either this omission should be promptly remedied by an amendment or the law repealed.

EXHIBIT F

RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE OF THE FOREIGN TRADE BUREAU, SEATTLE CHAMBER OF COMMERCE, ON MAY 18, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in language other than English, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of American merchandise throughout the Philippines; and

WHEREAS, many, and probably the greater part, of these Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be it

RESOLVED, That the Executive Committee of the Foreign Trade Bureau of the Seattle Chamber of Commerce join in protest against Act No. 2972 of the Philippine Legislature, and request our Congressional delegation in Washington to use its influence on behalf of the interests of the Chinese merchants in the Philippines to bring about the repeal of this law; be it also

RESOLVED, That copy of this resolution be forwarded to the Chamber of Commerce of the United States of American for whatever action it may deem necessary.

EXHIBIT G

RESOLUTIONS ADOPTED BY THE SEATTLE CHAMBER OF COMMERCE AND COMMERCIAL CLUB, MAY 23, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in language other than English, Spanish or a Philippine dialect, and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippine Islands have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of American merchandise throughout the Philippines; and

WHEREAS, many, and probably the greater part, of these Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; and

WHEREAS, said law appears to be an arbitrary and unfriendly act toward a friendly nation; therefore, be it

RESOLVED, That the Seattle Chamber of Commerce and Commercial Club request President Harding to cable General Wood and ask him to investigate and report on this matter and also that copies of this resolution be forwarded to the Washington State delegation in Congress; and be it also

RESOLVED, That copy of this resolution be forwarded to the Chamber of Commerce of the United States of America,

and to the Chambers of Commerce in Portland, San Francisco, and Los Angeles, for whatever action they may deem necessary.

EXHIBIT H

RESOLUTIONS ADOPTED BY THE FOREIGN TRADE DEPARTMENT OF THE PORTLAND CHAMBER OF COMMERCE AND APPROVED BY BOARD OF DIRECTORS OF THE PORTLAND CHAMBER OF COMMERCE, MAY 25, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as "An Act to define the language of keeping books of accounts and providing a penalty for the same" (No. 2972), which Act permits only the use of such language as English, Spanish, or native dialects and prohibits the use of the Chinese language; and

WHEREAS, The commerce of the Philippine Islands has been carried on and developed to a large extent for the last 400 years by the Chinese; and

WHEREAS, the greater portion of these Chinese merchants will find it impracticable to conform to the regulations of the above law and probably force a majority of them to discontinue business; and

WHEREAS, this law appears to be an unfriendly act towards a friendly nation and would hinder rather than develop our commerce with other nations which we are so anxious to build up; therefore, be it

RESOLVED, That the Portland Chamber of Commerce call these matters to the attention of the President of the United States, and Congress, requesting that an investigation of these conditions be made with a view to their alleviation; and be it further

RESOLVED, That copy of this resolution be forwarded to

the Oregon delegation in Congress, the Chamber of Commerce of the United States of America, and the Chambers in the Far East

BOARD OF DIRECTORS, PORTLAND CHAMBER OF COMMERCE,
By P. HETHERTON, *Executive Secretary.*

EXHIBIT I

RESOLUTION ADOPTED BY THE FOREIGN TRADE DEPARTMENT OF THE SAN FRANCISCO CHAMBER OF COMMERCE, JUNE 14, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law known as Act No. 2972, making it illegal, after November 1, 1921, for any person, company, firm, or corporation, engaged in business in the Philippine Islands, to keep their books of account in any language other than English, Spanish, or the Philippine dialects, and providing heavy penalties for violation of the law; and, further, that the Chinese merchants of the Philippines have to a very important degree been responsible for the growth and expansion of American business in the Philippine Islands, inasmuch as they have provided a very important organization for the distribution of American goods; and

WHEREAS, many of these Chinese business men would be forced, by this law, to abandon their business in the Philippines, representing probably some two hundred million dollars in invested capital; be it therefore

RESOLVED, That the Foreign Trade Committee of the San Francisco Cahmber of Commerce give its support to protests of the Chinese merchants of the Philippine Islands against Act No. 2972, and further urge action by the proper officials of the United States Government towards repeal-

ing this law, or securing an amendment which will permit the Chinese merchants of the Philippines to continue their business on an equitable basis of competition.

EXHIBIT J

THE MERCHANT'S ASSOCIATION OF NEW YORK PREAMBLES AND RESOLUTIONS ADOPTED JULY 6, 1921.

WHEREAS, the Legislature of the Philippine Islands has enacted a law No. 2972, February, 1921, providing that after November 1, 1921, it will be illegal for any person, company, firm, or corporation engaged in business, industry, or other activity for profit in the Philippine Islands to keep their books of account in a language other than English, Spanish, or a native dialect, and that violators of this law will be punished by a fine or imprisonment, or both; and

WHEREAS, such a provision of law is, we believe, unparalleled, unjust, and unnecessary, other countries, including the United States, not having this or any other similar requirement; and

WHEREAS, a large part of the business of the Philippine Islands has for years been in the hands of Chinese merchants, these merchants at present being reported to pay approximately 70 per cent of the business taxes of the country; and

WHEREAS, probably the greater part of these Chinese merchants find it impracticable to keep their books of account in any of the above-named languages, which will therefore force them to withdraw from business in the Philippines; and

WHEREAS, this law does not fairly consider these Chinese merchants, but seems rather to be aimed directly at them, and amounts, therefore, to class legislation; and

WHEREAS, the enforcement of the law and the withdrawal of a large proportion of the Chinese merchants from business in the Philippines will seriously and permanently injure the continuation and development of American business in that country; now, therefore, be it

RESOLVED, That the Merchant's Association of New York hereby records its strong protest against this law and promises its support to efforts being made to bring about its repeal or modification; and be it further

RESOLVED, That copies of these preambles and resolutions be forwarded to the President of the United States, the Secretary of War, the President of the Senate, the Speaker of the House of Representatives, the New York delegation in Congress, the Acting Governor-General in the Philippines, and the President of the Senate and Speaker of the House of Representatives in the Philippines.

On the 7th day of March, 1923, the Honorable Thomas A. Street, one of the justices of the Supreme Court of the Philippine Islands, issued a preliminary injunction of which the following is a copy:

(CAPTION AND TITTLE OMITTED)

ORDER TO SHOW CAUSE WHY PROHIBITION SHOULD NOT ISSUE AND PRELIMINARY INJUNCTION.

The petitioners in the above entitled action having presented a sworn petition alleging:

1. That on the 21st day of February, 1921 the Philippine Legislature enacted and approved Act No. 2972 in the following language:

"NO. 2972.—AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

SEC. 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.

SEC. 3. This Act shall take effect on November first, nineteen hundred and twenty-one.

Approved, February 21, 1921."

2. That said Act No. 2972 is unconstitutional and void and that it is wholly unreasonable and unnecessary as an exercise of police power; in that it deprives the petitioners and all other Chinese merchants in the Philippines of their natural liberty to employ their own language in the transaction of their business without due process of law; in that it deprives the petitioners and all other Chinese merchants in the Philippines of their property without due process of law; and in that it is discriminatory, amounts to class legislation, and denies the petitioners and said other Chinese merchants the equal protection of the law, in violation of the provisions of the Act of Congress of August 29, 1916, known as the Philippine Autonomy Act, or the Jones Bill.

3. That the respondent Collector of Internal Revenue in his capacity as such on the 2nd day of March 1923 inspected and seized the account books of the petitioners Yu Cong Eng, which are in the Chinese language, informed the respondent City Fiscal of the failure of the petitioner Yu

Cong Eng to keep his said account books in the English or Spanish language, or in any native dialect, and wrongfully and unlawfully recommended the prosecution of the petitioner Yu Cong Eng for the violation of said Law No. 2972; that as a result of said information and recommendation, the respondent City Fiscal wrongfully and unlawfully drafted, signed, and filed a criminal complaint before the respondent the Hon. Pedro Concepcion as Judge of the Court of First Instance of the City of Manila against the petitioner Yu Cong Eng, charging him with the violation of said Law No. 2972, a copy of which criminal complaint marked Exhibit "A" is attached to the petition; that as a result of the filing of said criminal complaint, the respondent Hon. Pedro Concepcion as Judge of said Court of First Instance of the City of Manila wrongfully and unlawfully issued a warrant for the arrest of the petitioner Yu Cong Eng and caused him to be arrested thereunder and will, unless restrained and prohibited by this Court proceed to try and condemn and punish the petitioner Yu Cong Eng for the violation of said Law No. 2972.

4. That the said respondent Collector of Internal Revenue, said Fiscal of Manila, and the said respondent Judge of the Court of First Instance threaten to and will, unless restrained and prohibited by this Court, cause all of the other said Chinese merchants to be arrested, prosecuted and convicted under said Act No. 2972, as shown by a letter from the said respondent Collector of Internal Revenue to the said respondent Fiscal of Manila published in the daily Bulletin of March 2nd, 1923, a copy of which publication marked Exhibit B is attached to the petition.

5. That there are approximately 12,000 other Chinese merchants in the Philippine Islands of whom about three thousand are residents of and engaged in mercantile pur-

suits for profiit in the City of Manila, and who are and will be similarly affected by said Act No. 2972 and the threatened criminal prosecutions thereunder; that the subject matter of the present action is one of common and general interest to all the the other said Chinese merchants thus similarly situated and by reason of their great number it is impracticable to bring them all before the Court, and for that reason the petitioners bring this action for the benefit of themselves and of all other Chinese merchants similarly situated and affected, as aforesaid.

6. That of all nationalities there are altogether about 85,000 merchants in the Philippine Islands; that of this number about 71,000 are Filipinos; that of the remaining 14,000 about 1,500 are of either American, Spanish, or British nationality, and of the remaining 12,500 approximately 12,000 are Chinese; that the aggregate business transacted by the said 12,000 Chinese merchants represents more than 60% of the total business done by all the merchants in the Philippine Islands; that for the reasons stated the burden of said Act No. 2972 is imposed almost exclusively upon said 12,000 Chinese merchants, including the petitioners.

7. That not to exceed 1% of the Chinese merchants in the Philippine Islands understand English, Spanish or any local dialect sufficiently well to be able to keep or revise their own books of account in any of those languages, and not to exceed 10% of said merchants have even a working knowledge of any of said languages such as would enable them to in any manner inform themselves as to the status of books of account kept in said languages, except by means of translators or interpreters; that the profits of the business of from one-third to one-half of said Chinese merchants are so small that they would be unable to afford the employment of a foreign bookkeeper or of a translator or

interpreter familiar with their own language and with that in which their books of account might be kept; that for the reasons stated the enforcement of said Law would deprive from one-third to one-half of the said Chinese merchants out of business, and would cause great and irreparable damage to the business of the remainder.

8. That the said 12,000 Chinese merchants as shown by the records of the Internal Revenue Department, presided over by the respondent W. Trinidad, now pay and for several years last past have been paying more than 60% of the taxes levied on the total mercantile transactions of the Philippine Islands, thereby conclusively demonstrating that the said Chinese merchants faithfully and honestly record their business transactions in their own language, and that the respondent Collector of Internal Revenue and his agents and inspectors are, and have at all times been able to fully inform themselves from the books of said Chinese merchants thus kept in their own language, of all the business transacted by them; for the reasons stated said Act No. 2972 is a wholly unnecessary burden upon the said Chinese merchants.

9. That in instituting, entertaining, and proceeding with the prosecution of said criminal action against the petitioner Yu Cong Eng, and in otherwise enforcing and threatening to enforce said law No. 2972, as hereinbefore set forth, said respondents are acting without and in excess of their jurisdiction; that the enforcement of said Law No. 2972 will cause multitudinous and persecuting criminal prosecutions, and the prosecution of said criminal action against the petitioner Yu Cong Eng, and the threatened institution and prosecutions of similar criminal actions against the petitioner Co Liam and other Chinese merchants of the Philippine Islands is causing, and will, unless restrained

and prohibited by this Court continue to cause the petitioners, and all of the other Chinese merchants of the Philippine Islands great and irreparable disturbance and injury in their business and property rights and interest, and for which they have no other plain, speedy and adequate remedy in the ordinary course (courts) of law by bill of exceptions, appeal, or otherwise.

And having prayed judgment in said petition: (a) declaring said Law No. 2972 unconstitutional and void; (b) granting an order against the respondents and each of them in conformity with Sections 514 and 516 of the Code of Civil Procedure in relation with Sections 217 and 226 of the same Code, to absolutely desist and refrain from further action in said criminal cause against the petitioner Yu Cong Eng and from instituting or prosecuting any other criminal actions under said Law No. 2972, and that pending the determination of said petition a preliminary injunction issue in conformity with Section 517 of the Code of Civil Procedure, enjoining the respondents and each of them and their agents or employees from proceeding further with the said criminal action against the petitioner Yu Cong Eng, or from instituting or prosecuting any other criminal action under said Law No. 2972, and further praying that the proceedings herein be expedited;

And it appearing that the petition states a cause of action for the relief prayed for;

It is hereby ordered that the respondents be cited to appear before this Court on or before the 14th day of March, 1923, to show cause why the prohibition prayed for should not issue, and that a preliminary injunction now issue in conformity with Section 517 of the Code of Civil Procedure, enjoining the respondents, their agents, or employees pending the final determination of said petition from pro-

ceeding further with the said criminal action against the petitioner Yu Cong Eng, or from instituting or prosecuting any other criminal actions under said Law No. 2972.

Manila, P. I., March 7, 1923.

(Sgd.) THOMAS A. STREET
One of the Justices of the Supreme Court of the Philippine Islands.

On the 7th day of March, 1923, the Clerk of the Supreme Court issued the following notice:

(CAPTION AND TITLE OMITTED)

Honorable W. Trinidad, *Collector of Internal Revenue*, Pedro Concepción *as Judge of the Court of First Instance of Manila* and Mr. E. P. Revilla, *City Fiscal.*

GREETINGS:

WHEREAS the HON. THOS. A. STREET, Associate Justice of the Supreme Court of the Philippine Islands issued today an order granting the Preliminary Injunction as prayed for in the petition filed in the above entitled cause.

NOW THEREFORE, You are hereby restrained and ordered from further proceedings in criminal action against the petitioner YU CONG ENG or from instituting or prosecuting any other criminal action under the Law No. 2972.

GIVEN by the Honorable THOS. A. STREET, Associate Justice of the Supreme Court of the Philippine Islands this 7th day of March of 1923.

(Sgd.) V. ALBERT
Clerk, Supreme Court, P. I.

On the 13th day of March, 1923, the petitioners filed the following motion for leave to amend:

(CAPTION AND TITLE OMITTED)

MOTION FOR LEAVE TO AMEND.

COME NOW the petitioners by their undersigned attorneys and move the Court for leave to amend their petition in the above entitled action by adding thereto the accompanying amendment.

Manila, P. I., March 12, 1923.

LA O, PALMA & LEUTERIO
and
GIBBS & MCDONOUGH,
By (Sgd.) A. D. GIBBS
Attorneys for Petitioners
301-302 Roxas Building, Manila.

On the same day, the petitioners filed the following amendment to the petition for prohibition:

(CAPTION AND TITLE OMITTED)

AMENDMENT TO PETITION FOR PROHIBITION.

COME NOW the petitioners and by leave of Court first obtained amend their petition by adding thereto the following:

That the petitioners and the twelve thousand or more other Chinese for whose benefit this action is prosecuted are now, and for many years last past have been, domiciled in the Philippine Islands and engaged in business as merchants in said Islands; that as such merchants, they are entitled under the treaties now in force between the

United States and China to all the rights, privileges and immunities enjoyed in the Prilippine Islands by the citizens and subjects of the "most favored nation"; that under said treaties the petitioners and said other Chinese are entitled to the same rights, privileges and immunities as the citizens and subjects of Great Britain and Spain; that said treaties have the same force and effect in these Islands as do the laws of the Congress of the United States; that said Act 2972 is in violation of said treaties in that it deprives the petitioners and said other Chinese merchants of their liberty and property, whereas it imposes no burden whatever upon the citizens and subjects of Great Britain and Spain; that for the reasons stated said Act No. 2972 of the Philippine Legislature is void independently of its unconstitutionality.

Manila, P. I., March 12, 1923.

LA O, PALM & LEUTERIO
and
GIBBS & MCDONOUH,
By (Sgd.) A. D. GIBBS
Attorneys for Petitioners
301-302 Roxas Bldg., Manila.

CITY OF MANILA
PHILIPPINE ISLANDS } SS.

YU CONG ENG being first duly sworn, deposes and says:

That he has had interpreted to him the foregoing amendment, knows the contents thereof and that the facts therein stated are true as he verily believes.

(Sgd.) YU CONG ENG.

Subscribed and sworn to before me this 12 day of March, 1923, affiant exhibiting Cedula No. F-2534, issued at the city of Manila, P. I., on the 2nd day of January, 1923.

(Sgd.) ROMAN OZAETA
Notary Public
My commission expires on
December 31, 1924.

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Not. Reg. for 1923
Book I
(Seal)

On the 13th day of March, 1923, the Court issued the following order:

> Considering the motion of the attorneys for the petitioners in case No. 20479, Yu Cong Eng and Co Liam *etc. vs.* W. Trinidad *etc., et al.*, praying that they be permitted to amend their original petition by adding thereto the amendment accompanying their motion, MOTION GRANTED.

On the 14th day of March, 1923, the respondents presented the following demurrer to the petition for prohibition:

(CAPTION AND TITLE OMITTED)

DEMURRER

Comes now the undersigned, Eulogio P. Revilla, Fiscal for the City of Manila, in his own behalf and on behalf of his correspondents in the above entitled cause, and demurs to the complaint filed herein, on the following grounds:

1. That the facts alleged in the complaint do not constitute a cause of action against the respondents;

2. That this Honorable High Tribunal has no jurisdiction to grant the relief prayed for in the complaint; and

3. That petitioners have other plain, speedy, and adequate remedy.

ARGUMENTS.

I.

With respect to the first ground of this demurrer, we will consider the allegations of the complaint in so far as they refer (a) to the twelve thousand Chinese merchants in the Philippines; (b) to the petitioner Co Liam; and (c) to the petitioner Yu Cong Eng.

(a) The complaint does not contain any allegation which would show that the twelve thousand Chinese merchants in the Philippines are not capable of representing themselves, and inasmuch as, in accordance with the principles of the remedial law, parties litigants could not assume other representation than their own nor defend other than their own interests, all the allegations in the complaint having reference to the conditions of the twelve thousand Chinese merchants in the Philippines should not be taken into account, nor should the herein respondents care a whit whether or not said merchants be prosecuted for not complying with the provisions of Act No. 2972 of the Philippine Legislature. If the interests of said twelve thousand Chinese merchants could also be considered in this action, the complaint would also be rendered objectionable for defect of parties defendant, for in that case the action should be brought not only against the three respondents herein, but also against all

the provincial fiscals in the Philippines and all those who could or might present complaints which would give rise to criminal prosecutions for violations of said Act.

(b) With regard to the petitioner Co Liam, the only thing alleged in the complaint is the fact that the provisions of said Act 2972 are prejudicial to him, but not a single act, whether it be a *ministerial or judicial function*, is therein cited, the exercise of which all of the respondents, or any of them, have exceeded their jurisdiction. The complaint, therefore, fails to show on its face sufficient facts giving the petitioner Co Liam a cause of action against the herein respondents.

(c) As regards Yu Cong Eng, the causes of action set forth in the complaint are briefly as follows:

Against the COLLECTOR OF INTERNAL REVENUE: That this official inspected and seized the account books of Yu Cong Eng, informed the City Fiscal that the petitioner had not complied with the provisions of said Act No. 2972 and recommended the prosecution of said Yu Cong Eng for a violation of said Act.

Against the CITY FISCAL: That this official wrongfully and unlawfully drafted, signed and filed a criminal complaint against the petitioner Yu Cong Eng before the respondent Pedro Concepcion as Judge of First Instance of Manila, for a violation of the aforementioned Act; and

Against JUDGE OF FIRST INSTANCE PEDRO CONCEPCION, for having wrongfully and unlawfully issued a warrant for the arrest of Yu Cong Eng and caused him to be arrested thereunder, and, unless restrained and prohibited by this High Tribunal, would proceed to try, condemn and punish the said petitioner Yu Cong Eng for said alleged violation of said Act.

The foregoing being the alleged intervention and participation of the herein respondents, would an action for

either prohibition or certiorari, or both, lie? Section 516 of Act No. 190, which deals with the remedy of prohibition before the Supreme Court, provides:

> The Supreme Court shall have concurrent jurisdiction with Courts of First Instance over inferior tribunals, corporations, boards, or persons, whether exercising functions judicial or ministerial, which are without or in excess of the jurisdiction of such tribunal, corporation, board, or person, and also have original jurisdiction over Courts of First Instance when such Courts are exercising functions without or in excess of their jurisdiction. The proceedings of the Supreme Court in prohibition shall be the same as those provided for prohibition in sections 226, 227, and 228 of this Code.

Section 514 of said Act 190 dealing with the procedure in certiorari before the Supreme Court, reads as follows:

> The Supreme Court shall have concurrent jurisdiction with the Court of First Instance in certiorari proceedings over any other inferior tribunal, board or officer exercising judicial functions that has exceeded the jurisdiction of such tribunal, board, or officer and where there is no appeal or any plain, speedy, or adequate remedy; and shall likewise have original jurisdiction by certiorari proceedings over the proceedings of Courts of First Instance wherever said Courts have exceeded their jurisdiction, and there is no plain, speedy, and adequate remedy by bill of exceptions, or appeal, or otherwise. The proceedings of the Supreme Court in certiorari proceedings shall be the same as those provided for such proceedings for Courts of First Instance in sections 217, 218, 219, 220, and 221.

In view of the above provisions, we maintain that the intervention of the respondents in the accusation and prosecution of the petitioner Yu Cong Eng does not come within

the purview of the two sections just quoted. There is no law, and there cannot be any law, which prohibits any person from preferring charges before the competent authorities for acts which, in his opinion, constitute a violation of any existing law. Moreover, such an accusation or charges could hardly be considered a *judicial or ministerial function*, and therefore, the respondent Collector of Internal Revenue could not have acted without or in excess of a judicial jurisdiction which he does not have, or a ministerial function which he has not exercised.

Yu Cong Eng has infringed in the City of Manila the provisions of Act No. 2972, infringement which is admitted in the complaint, and under the circumstances the respondent Fiscal for said City has, under the law, not only the authority but the duty of prosecuting him, and we believe that no one would dare to assert that the discharge of a duty in strict compliance with the law is an excess of jurisdiction.

Upon presenting and swearing to the complaint in Manila, the Judge before whom the same was presented and sworn to, has to proceed thereon, and issue as first step thereto, the corresponding warrant of arrest. In the present case, even admitting for the purpose of this demurrer, that the respondent Judge had issued the order of arrest against Yu Cong Eng in order to give effect to the complaint filed against him, said Judge did nothing more than to comply with a *duty, purely ministerial*, and in the ordinary course of business, and, therefore, we again fail to see in what way he would have acted without or in excess of a judicial or ministerial function.

However, it is pretended that the said Act 2972 is unconstitutional and void, and that in instituting, entertaining and proceeding with the prosecution of the criminal action against Yu Cong Eng, as well as the carrying into ef-

fect, and the threats to do so, of said Act No. 2972, the respondents have acted without or in excess of their jurisdiction.

When this demurrer will be argued orally, we will go so far as showing the fact that in many countries there exists a legislation similar to the herein contested Act No. 2972, and that the pretension of the petitioners that this law is unconstitutional and void is absolutely without foundation. Right now, we will confine ourselves by recalling to mind that the present action is for *certiorari and prohibition*, as the petitioners name their appication, and presuming, as it is presumed, that laws are constitutional and valid until the same are declared null by a competent tribunal, the respondent Fiscal for the City of Manila could not have exceeded his jurisdiction by instituting a criminal action upon learning that the provisions of Act 2972 have been violated. In the same manner, we fail to understand in what way Judge Pedro Concepcion has gone beyond his jurisdiction by giving effect to the complaint presented by the Fiscal, before the question of the validity or constitutionality of the Act, the provisions of which are alleged in the complaint to have been infringed, is raised on the date of the hearing of the case.

On the other hand, it is to be borne in mind that in proceedings in prohibition, as well as in those in certiorari, no question can be raised in a superior tribunal, impugning the constitutionality of any law which has not been raised and decided by an inferior court, although, in the end it is the superior tribunal which will definitely settle the same when the case wherein it was raised, is brought up on appeal.

For all the foregoing, we believe we have shown that the complaint herein does not contain facts sufficient to constitute a cause of action for the petitioners, against the respondents.

II.

1. We respectfully invite the attention of this Honorable Court to the fact that, as stated in the complaint, there is a criminal case (No. 25551) now pending in the Court of First Instance of Manila, in which the accused is the herein petitioner Yu Cong Eng, for not having kept his books of account in English, Spanish, or a local dialect, in violation of Act No. 2972 of the Philippine Legislature. The very question submitted by plaintiffs in the instant case, namely, that they are entitled to keep their account books in their own language, i. e. in Chinese exclusively, for the reason that said Act is unconstitutional, and, therefore, null and void will be decided in said crimial case. The lower court having acquired and exercised its jurisdiction on the subject-matter of this complaint, and on the person of said Yu Cong Eng, who has submitted to said jurisdiction by furnishing bail for his temporary release, during the pendency of said case, should maintain it to the last, and in order that this Honorable Court may take cognizance of the case, it must be brought before it by appeal. This being the case, we submit that this Honorable Court has no original jurisdiction to exercise upon the petition of the plaintiffs.

2. According to Sections 226 and 516 of the Code of Civil Procedure, the writ of prohibition, which is the real remedy sought for according to the prayer of the complaint, is only to be availed of in cases where a judicial or ministerial function has been exercised without, or in excess of jurisdiction, by a tribunal, corporation, board, or person. But, as shown above, defendants in the present case, according to the facts averred in the complaint, have exceeded no jurisdiction at all.

III.

It is general rule that in prohibition proceedings a court of equity will not restrain the authorities of either a state or municipality, from the enforcement of a criminal law and enjoin criminal prosecutions. Consequently, if prohibition will not lie to prevent criminal prosecutions, then it follows that the remedy sought for by plaintiffs is not the adequate one.

The plain, speedy and adequate remedy available to the petitioner Yu Cong Eng, who, from the allegations of the complaint, is the only one affected by the actions of the respondents, is to raise the question of the constitutionality of Act No. 2972 at the trial of the said case No. 25551 presented against him in the Court of First Instance of Manila, and to appeal from the decision of said court in case said question is decided adversely to his contention.

FOR THE FOREGOING REASONS, and without prejudice of submitting further arguments and legal authorities in support of our contentions at the hearing of this demurrer, the undersigned respectfully prays to this Honorable Supreme Court that this case be dismissed with costs to the plaintiffs, and that the preliminary injunction issued in its order of March 7, 1923, against defendants, be dissolved.

Manila, March 14, 1923.

Respectfully submitted,
(Sgd.) E. P. REVILLA
City Fiscal.

On the 15th day of March, 1923, the Supreme Court issued the following order:

Upon the demurrer filed in case No. 20479, Yu Cong Eng and Co Liam, etc. *vs.* W. Trinidad etc., *et*

al., it is the order of the Court that the hearing of said demurrer be set for Friday, the 23rd instant at 9:00 o'clock a. m.

On the 31st day of March, 1923, the Supreme Court of the Philippines issued an order overruling the demurrer of respondents as follows:

> On consideration of the demurrer to the petition in the case of Yu Cong Eng *vs.* Trinidad, R. G. No. 20479, the Court said: 1. That the demurrer be overruled; 2. That the respondents be given ten days to file an answer; 3. That the parties be permitted, if they so desire, to present evidence before the clerk of this Court, acting as Commissioner; and 4. That subsequent thereto, on submission of the case, the Court will decide the question at issue.

On the 13th day of April, 1923, the respondents filed the following answer:

(CAPTION AND TITLE OMITTED)

ANSWER

Comes now the undersigned Fiscal for the City of Manila in the name and on behalf of the respondents in the above entitled cause, and answering the petition presented herein, respectfully states to this Honorable Court:

(a) That he admits paragraphs I, II, III, IV and V of the petition;
(b) That he likewise admits that sixty per cent of the aggregate business in the Philippine Islands is handled by Chinese merchants; and
(c) That he denies generally and specifically all other allegations of the petition which are not herein expressly admitted.

And by way of special defense, further states:

I.

That Act No. 2972 of the Philippine Legislature, approved February 21, 1921, went into effect on the 1st day of January, 1923, in accordance with the provisions of Act No. 2998 of said legislative body.

II.

That one of the attributes and duties of the respondent Collector of Internal Revenue and of his agents and subordinates duly authorized, is and has always been to inspect and revise the books of account of the merchants in the Philippine Islands, and, in case of finding in such inspection and revision that a person has committed a violation of any law or regulation administered by the Office of Internal Revenue, to seize said books and immediately bring such violation to the attention of the Fiscal, of the province or city, wherein the same has been committed.

III.

That on the 2nd day of March, 1923, the agents of the Collector of Internal Revenue, in the exercise of the powers conferred upon them by the Internal Revenue laws, inspected the books of account of the petitioner Yu Cong Eng, whose commercial establishment is located at No. 696 Juan Luna in this City of Manila, and noted that since the 1st of January up to the 2nd of March of 1923, said Yu Cong Eng did not keep his books of account in English, Spanish or any of the local dialects, as required by said Act No. 2972, for which reason they took possession of said books of account and informed the respondent City Fiscal, for such appropriate action as the latter might take, that said petitioner had violated the provisions of said Act No. 2972, submitting to that effect the evidence showing such violation.

IV.

That the respondent City Fiscal, upon receipt of the evidence showing the alleged violation committed by Yu Cong Eng, had not only the power, but the unavoidable duty of prosecuting or causing to be prosecuted the said Yu Cong Eng for such violation of Act 2972, and it was only in compliance with this obligation that he caused one of his assistants to file criminal case No. 25551 of the Court of First Instance of Manila against said petitioner Yu Cong Eng, by means of the presentation of the corresponding information, a copy of which is attached to the record as Exhibit "A" of the petition.

V.

That said information was subscribed, sworn to and filed on March 7, 1923, before the respondent Pedro Concepción, Judge of First Instance of Manila, who, by reason of his office and in compliance with a ministerial and rutinary duty which he had as such Judge of First Instance, administered the oath taken by the assistant fiscal who subscribed and filed the aforementioned information.

VI.

That even before the subscribing, swearing to and presenting of said information, the respondent Pedro Concepción, at the instance of said Yu Cong Eng and his representatives, admitted a bail in the sum of ₱2,000.00 furnished for the temporary release of said Yu Cong Eng during the pendency of said criminal case No. 25551, instituted against him for the aforesaid violation of said Act No. 2972.

VII.

That because of the furnishing of the bail mentioned in the next preceding paragraph hereof, the issuance of an

order for the arrest of the petitioner Yu Cong Eng for said alleged violation of the law charged against him became unnecessary and, consequently, the respondent Judge Pedro Concepción did not issue, nor cause to be issued, and in fact there was not issued, by reason of the information presented against said Yu Cong Eng in the aforementioned case, any order of arrest.

VIII.

That by furnishing said bond, the petitioner Yu Cong Eng voluntarily submitted himself to the jurisdiction of the Court of First Instance of Manila.

IX.

That the respondents have not enforced the provisions of Act No. 2972, nor taken any action by virtue thereof, against the petitioner Co Liam or any other merchant, Chinese or of other nationality, with the exception of said criminal case No. 25551 of the Court of First Instance of Manila filed against the petitioner Yu Cong Eng, and of criminal case No. 25550 of said court, filed against Chan Hang Chiu and Chan Bong Chong, owners of other commercial establishments in the city of Manila.

X.

That the respondents Collector of Internal Revenue and City Fiscal have never had, nor do they have any intention of instituting other criminal actions, or taking any action against the violators of said Act 2972 until after the Courts of the Philippines have definitely decided upon its constitutionality and validity in said two cases Nos. 25550 and 25551 of the Court of First Instance of Manila.

XI.

That the respondent Judge Pedro Concepción, by rea-

son of his office, does not have the duty of instituting, nor has he ever had any intention of instituting *motu propio* any criminal action for a violation of said Act 2972.

XII.

That when the respondent Collector of Internal Revenue informed and complained to the City Fiscal that the petitioner Yu Cong Eng had violated the provisions of Act No. 2972, a violation which is admitted in the petition herein, the respondent Collector of Internal Revenue did nothing but exercise a duty which any resident of the Philippine Islands has and comply with a duty expressly imposed upon him by law.

XIII.

That the respondents Collector of Internal Revenue and City Fiscal are not empowered or in any way authorized to declare that said Act No. 2972 is unconstitutional, even though it were so, it being the exclusive power of the Courts of justice to pass upon and decide questions relative to the validity or nullity of any law.

XIV.

That during such time as said Act 2972 may be in force and until the same is declared unconstitutional and void, the respondents Collector of Internal Revenue and City Fiscal are under the obligation of acting in accordance with its provisions.

XV.

That the respondent Judge Pedro Concepción could not and cannot declare that said Act 2972 of the Philippine Legislature is unconstitutional and void, even if the same may turn out so to be, until its validity is questioned and put properly in issue before him.

XVI.

That the accused in said criminal cases Nos. 25550 and 25551 of the Court of First Instance of Manila, have not even been duly informed of the nature of the offense charged against them in the complaint filed in said cases, and at the stage in which said cases are now, the respondent Judge Pedro Concepción could not and cannot declare said Act 2972 to be or not to be unconstitutional and void.

XVII.

That said Act 2972, copy of which is reproduced in paragraph V of the petition herein, is of general application to all those engaged in commerce in the Philippine Islands, without distinction as to race or nationality.

XVIII.

That Act No. 2972 is constitutional and valid, having precedents in many countries and enacted in the exercise of the police power and the power to impose taxes of the State, the Philippine Legislature being the body called upon to judge and determine, within constitutional limitations, the necessity, justice, wisdom and convenience of the measure embodied in said Act.

XIX.

That said Act 2972 indicates the languages or dialects in which merchants of the Philippines should keep their books of account, and punishes a violation of its provisions, but does not confer any jurisdiction in the exercise of which the respondents may act without or in excess thereof.

XX.

That by virtue of the organic law of the courts of justice of the Philippine Islands, Judge Pedro Concepción

has jurisdiction and power to take cognizance of the violations charged in the aforesaid criminal cases Nos. 25550 and 25551 of the Court of First Instance of Manila, which are now pending before him, and in which he could hear and decide questions involving the validity or nullity of said Act No. 2972.

XXI.

That there are in the Philippines about ten thousand Chinese commercial establishments, and if the Chinese merchants could keep their books in their own language, the officials and agents of Internal Revenue who do not speak, read or write the Chinese language would be unable to revise said books and would have to abide solely by what said Chinese merchants might deem best to declare respecting their mercantile transactions.

XXII.

That even supposing that all the Chinese merchants would act in good faith in declaring their commercial operations, if their books of account were kept in Chinese, the Internal Revenue officials who do not speak, nor read nor write said language, would have to satisfy themselves with the interpretation which the Chinese merchants might give to the laws imposing taxes, and said Chinese merchants would be the ones who would decide whether in their transactions they ought or ought not to pay any tax, and the amount thereof.

XXIII.

That the Government of the Philippine Islands depends upon the taxes and imposts which it may collect in order to carry out its functions, and the determination of whether the mercantile operations of the merchants are or are not subject to taxation, as well as the fixing of the amount

of said taxes and imposts cannot and ought not to be left at the mercy of those who are obliged to pay the same.

XXIV.

That due to the impossibility on the part of the officials of the Office of Internal Revenue to revise and check up properly the exactness and correctness of the books of account which the Chinese merchants keep in their own language, because of the characters in which the same are written, the public treasury loses every year, unnecessarily and unjustly, considerable sums by way of imposts and taxes which said Chinese merchants fail to pay.

XXV.

That all merchants, without distinction as to nationality, have been given ample opportunity to prepare themselves and be in condition to comply with the provisions of said Act 2972.

FOR ALL THE FOREGOING, the respondents respectfully pray this Honorable Court (a) to deny the petition for a writ of prohibition presented by the petitioners; (b) in case the validity of said Act 2972 be passed upon in these proceedings, to declare that said Act is constitutional and valid; (c) to dissolve the writ of preliminary injunction issued against the respondents on March 7, 1923; and (d) to adjudge the costs of these proceedings against the petitioners.

Manila, P. I., April 13, 1923.

(Sgd.) E. P. REVILLA
City Fiscal
Attorney for the Respondents.

UNITED STATES OF AMERICA
PHILIPPINES ISLANDS } SS
CITY OF MANILA

I, E. P. REVILLA, Fiscal for the City of Manila, and

one of the respondents in the above entitled cause, being first duly sworn, depose and say:

That all the allegations contained in the foregoing answer are true according to the best of my knowledge and belief.

(Sgd.) E. P. REVILLA
City Fiscal.

Subscribed and sworn to before me this 13th day of April, 1923, in the City of Manila, P. I., affiant exhibiting his cedula No. F—10438 issued in said city on January 16, 1923.

(Sgd.) V. ALBERT
Clerk, Supreme Court of the Philippines.

On the 14th day of April, 1923, Hon. Geo. A. Malcolm, Associate Justice of the Supreme Court, acting in vacation, issued the following order:

(CAPTION AND TITLE OMITTED)

ORDER

The answer having been filed by the respondents in the above entitled case;

It is hereby ordered that the hearing of said case be set for Wednesday, the 11th day of July, 1923, at 9:00 a. m., without prejudice to the taking of evidence before the Clerk of this Court, acting as commissioner, if the parties so desire.

Manila, April 14, 1923.

(Sgd.) GEO. A. MALCOLM
Associate Justice of the Supreme Court, Acting in Vacation.

On the 20th day of April, 1923, the petitioners filed the following demurrer to the answer of the respondents:

(CAPTION AND TITLE OMITTED)

DEMURRER TO ANSWER OF RESPONDENTS

COME NOW the petitioners by their undersigned counsel and demur to the answer of the respondents in the above entitled action for the reason that the answer does not state facts sufficient to constitute a defense to the petition.

ARGUMENT.

The admission by the respondents that the Philippine Legislature enacted and approved Act 2972, together with the further admission that "60% of the aggregate business in the Philippine Islands is handled by Chinese merchants" renders all other denials of the answer futile as a defense to the petition for the reason that said law in conjunction with said admission shows on its face that it is unconstitutional and void, in that its entire burden falls upon the petitioners and the other Chinese merchants in the Philippines, depriving them of their natural liberty and the fundamental right to employ their own language in the transaction of their private business; in that it deprives them of their property without due process of law; and in that it is discriminatory, amounts to class legislation and denies the petitioners and other Chinese merchants of the Philippines the equal protection of the law in violation of the Constitution of the United States and of the provisions of the Act of Congress of August 29, 1916 known as the Philippine Autonomy Act or the Jones Bill, and in violation of the treaty obligations of the United States Government to the Government of China guaranteeing to Chinese subjects and

particularly to Chinese merchants domiciled within the jurisdiction of the United States all the rights, privileges and immunities enjoyed by the citizens and subjects of the "most favored nation", and of which treaty obligations this Honorable Court must take judicial cognizance to the same extent as it does of acts of the Congress of the United States.

In passing upon this demurrer, the Court should take into consideration the demurrer of the respondents to the petition and the arguments in support thereof which admitted the truth of the allegations of the petition, and which admission in the light of the facts involved, of which the Court will take judicial cognizance, clearly demonstrate that the general denial of the facts not expressly admitted is for the most part merely a formality adopted in an endeavor to compel the petitioners to offer evidence in support of their allegations, and this is particularly true with reference to the denial of the allegations of the petition with reference to the ignorance of the Chinese merchants of the English and Spanish languages and of the local dialects, and with reference to the allegations of the petition as to the impossibility of the petitioners and other Chinese merchants complying with the provisions of Act 2972.

In the case of Young vs. Rafferty, 33 Phil. 560 this Court referred to the testimony of a witness for the Internal Revenue Department to the effect that about two-thirds of the Chinese merchants could comply with the regulations of that department to keep their daily sales in the English or Spanish language. This statement being in the nature of an opinion was naturally made as favorable as possible to the Government, but even assuming it to be true, it follows that at least one-third of the Chinese merchants could

not have complied with the less difficult requirements of those regulations, nor much less can they now comply with Act 2972, and that therefore, as to that one-third, the law is not only unreasonable as a police measure, but would if enforced necessarily result in the confiscation of their property or the taking thereof without due process of law.

In support of our demurrer we refer to all the authorities heretofore cited in our memorandum maintaining the sufficiency of the petition.

We call particular attention to the decision of the Supreme Court of Missouri in the case of State vs. Barnett, from the syllabus of which we quote as follows:

> "Where the pleaded facts in a peition for a writ of prohibition, admitted by demurrer, show relator's right to the writ, the demurrer should be overruled and the right to the writ made permanent *without tolerating further pleadings.*"
> (State vs. Barnett, 149 S. W. 311.)

The respondents in the case at bar first demurred to the petition, thereby admitting the facts therein pleaded and now after the overruling of the demurrer attempt to put in issue allegations of the petition, as to the truth of many of which the Court will take judicial cognizance. This will result in subjecting petitioners to great unnecessary expense in presenting proofs, and amounts to trifling with the administration of justice. Under the Missouri doctrine established in the case of State vs. Barnett (*supra*) when respondents demur to a petition for a writ of prohibition and their demurrer is overruled, the Court will not tolerate an answer denying the facts previously admitted by the demurrer.

Under the provisions of Section 275 of the Code of Civil Procedure we believe this Honorable Court is authorized to take judicial cognizance of the fact that the great majority

of Chinese merchants in the Philippines are unable to read or write any other language than their own; that it is not only practicable and possible for the internal revenue department to obtain the services of inspectors capable of reading and understanding the Chinese written language, but that such inspectors could be employed by the Government at not to exceed one-hundreth part of 1% of the expense which would be imposed upon the Chinese merchants in employing bookkeepers and interpreters to comply with Act No. 2972.

Respectfully submitted,

GABRIEL LA O. PALMA & LEUTERIO
AND
GIBBS & McDONOUGH
By (Sgd.) A. D. GIBBS
Attorneys for Petitioners.

Manila, P. I., April 20, 1923.

On April 22, 1923, the Hon. Geo. A. Malcolm, Associate Justice of the Supreme Court acting in vacation, issued the following:

(CAPTION AND TITLE OMITTED)

ORDER

The petitioners having filed a demurrer to the answer of the respondents in the above entitled cause, and it appearing that the said answer has been set for trial at 9:00 o'clock a. m., Wednesday, July 11, 1923,

It is hereby ordered that the said demurrer be heard at the same time as the answer herein.

Baguio, April 22, 1923.

(Sgd.) GEO. A. MALCOLM
Associate Justice of the Supreme Court, Acting in Vacation.

On June 8, 1923, counsel for respondents presented the following:

(CAPTION AND TITLE OMITTED)

MOTION

COME NOW the respondents in the above entitled case, thru the undersigned City Fiscal, and to the Honorable Supreme Court respectfully ask that the Clerk of this Court be required to set any day and hour of the present month of June to receive the proofs that the parties in this case may present.

Even though the petitioners have interposed a demurrer to the answer of the respondents, the merits of which demurrer may be appreciated by merely reading the same, this Honorable Court having resolved by order of April 22, 1923, that said demurrer be heard at the same time as the answer of the respondents, which hearing has been set for July 11th next, the undersigned counsel believe that it is proper to present the proofs authorized in the resolution of this Court of March 31, 1923, and in the order of the vacation Justice of April 14, 1923.

Manila, June 8, 1923.

(Sgd.) E. P. REVIILLA,
City Fiscal.
Attorney for the Respondents.

On the 12th day of June, 1923, the petitioners filed the following objection:

(CAPTION AND TITLE OMITTED)

COME NOW the petitioners in the above entitled action and object to the motion of the respondents of June 8, 1923 asking that a date be fixed for the taking of proofs in the

above entitled action previous to the decision of the Court upon the demurrer to the answer of the respondents for the following reasons:

1. That should the petitioners consent to and participate in the taking of proofs previous to the determination of their demurrer to the answer they would thereby waive such demurrer.

2. That the Supreme Court of the United States has recently declared the laws of 21 states of the Union limiting the language to be employed in the public schools to English unconstitutional and void as a violation of the Fourteenth Amendment to the Constitution; that judging from the cabled report of said decision recently published in the Manila daily newspapers it is conclusive to the effect that Act No. 2972 of the Philppine Legislature is unconstitutional and void on its face; and that the undersigned have cabled to the United States for a copy of said decision and hope to have the same available for presentation in support of the demurrer to the answer on the 11th of July.

3. That should this Honorable Court overrule the demurrer to the answer, it will probably be necessary to take proofs in the provinces as well as in the City of Manila and it will be impossible to terminate the taking of such proofs previous to the 11th day of July.

Manila, June 11, 1923.

Respectfully submitted,

GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS
Attorneys for the Petitioners.

On the 18th day of June, 1923, Hon. Charles A. Johns, Associate Justice of the Supreme Court acting in vacation, issued the following order:

(CAPTION AND TITLE OMITTED)

ORDER

In re application of respondents June 8th for an order fixing the time for the taking of any testimony and the objection to the petitioners to the making of such an order, it appearing that on April 22nd this Court made an order setting the case for trial on the answer at 9:00 o'clock a. m. on July 11, 1923, and that the demurrer to the answer should be heard at the same time, it is now ordered that the case be set down for the taking of any evidence by either party on the 26th day of June, 1923, before the Clerk of this Court at his office in Manila, or at any other time or piace this Court may order for the convenience of the parties, with the express understanding and proviso that in the taking of any testimony the petitioners do not waive or jeopardize any rights on their demurrer, and that they have the same legal right to rely upon their demurrer as if no evidence was taken. Further, if it appears to the satisfaction of the Court that the evidence in this case cannot be concluded on or before the 9th of July, 1923, or for any other reason, either party on proper showing may apply for an extension of time in which to finally submit the case in this Court.

Manila, June 18, 1923.

(Sgd.) CHARLES A. JOHNS,
Associate Justice of the Supreme Court, Acting in Vacation.

On the 6th day of July, 1923, the petitioners filed the following amended motion:

(CAPTION AND TITLE OMITTED)

AMENDED MOTION.

COME NOW the petitioners and move the Court to re-

quire the respondent Collector of Internal Revenue to furnish for use as proof in the above entitled case the following data:

(1) The names and addresses of all Chinese merchants, companies and corporations engaged in business in the Philippine Islands.

(2) The amount of sales tax paid each year by each merchant, company and corporation (Chinese) for the years 1918 and 1922.

(3) The amount of income tax paid by each Chinese merchant, company, and corporation for each year for the years 1918 and 1922.

(4) The total amount of penalties paid by Chinese merchants, companies and corpartions for each year for the years 1918 and 1922.

That the respondent Collector has refused to furnish the foregoing data without an order of Court; that petitioners have no other means of obtaining the same except by an examination of all the Chinese merchants in the Islands; that the data mentioned in Clauses 1, 2, and 3, is material upon the question of the ability of the Chinese merchants of the Philippine Islands to comply with Act 2972, and the data mentioned in Clause 4 is necessary to meet certain data which respondents propose to offer as to the penalties paid by merchants of all nationalities of the Philippine Islands.

Manila, P. I., July 6, 1923.

GIBBS & McDONOUGH
AND
PALMA & LA O.
By (Sgd.) A. D. GIBBS
Attorneys for Petitioners.

On the 7th day of July, 1923, the petitioners filed the following:

(CAPTION AND TITLE OMITTED)

COME NOW the petitioners by their undersigned attorneys and without waiving any rights under their demurrer to the answer of the respondents respectfully represent to the Court that the taking of evidence in the above entitled case cannot be concluded on or before July 9, 1923; that petitioners have yet to present the testimony of a considerable number of witnesses in support of the allegations of the petition, and moreover cannot conclude the presentation of their proofs without the data called for in their motion and amended motion of July 6, 1923, requesting an order from this Honorable Court requiring the respondents to furnish certain data therein specified.

For the reasons stated petitioners pray that the date for the submission of the case be postponed, subject to reassignment upon the conclusion of the proofs, all in accordance with the permission granted by this Court in its order of June 18, 1923.

Manila, P. I., July 6, 1923.

Respectfully submitted,

PALMA & LA O AND
GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS.
Attorneys for the Petitioners.
302 Roxas Bldg., Manila, P. I.

On the 10th day of July, 1923, the respondents presented the following:

(CAPTION AND TITLE OMITTED)

MOTION TO LIMIT THE TIME FOR THE PRESENTATION OF EVIDENCE.

The attorneys for the petitioners under date of July 6, 1923, presented a motion to this Honorable Court asking "that the date of the submission of this case be postponed, subject to reassignment upon the conclusion of the proofs", and for the purpose of answering such pretension of said petitioners as well to support the present motion, the respondents, by the undersigned Assistant Fiscal, respectfully call the attention of this Honorable Court to the following facts:

1. That upon presenting the petition which gave rise to these proceedings, this Court issued under date of March 7, 1923, a writ of preliminary injunction enjoining the respondents from continuing with the proceeding instituted against the petitioner Yu Cong Eng, and from instituting or prosecuting any other criminal action under the Law No. 2972.

2. That the demurrer to the complaint herein having been overruled and the answer thereto presented, this Honorable Court, by order of April 14, 1923, set this case for hearing on July 11, 1923.

3 That upon receipt of this order, the petitioners presented on April 20, 1923, a demurrer to the answer filed by the respondents, the object of which demurrer may be ascertained by a mere reading thereof.

4. That by order of this Honorable Court dated April 22, 1923, the hearing of the demurrer to the answer of the herein respondents was also set for the 11th day of July, 1923.

5. That in view of the orders issued by this Honorable Court on the 14th and 22nd days of April, 1923, above-mentioned, the respondents, in pursuance of the resolution of this Court overruling their demurrer to the complaints, asked that the Clerk of said Court be instructed to fix the date and hour for the presentation of the evidence which the parties hereto might offer.

6. That notwithstanding the opposition of the petitioners, the Honorable vacation Justice, on June 18, 1923, fixed the 26th day of said month and year for said Clerk of the Court to receive the evidence in this case.

7. That the presentation of the evidence not having taken place on said 26th day of June, 1923, on account of there not having been a Chinese interpreter and an English stenographer then available, upon stipulation by the parties, the 2nd day of this month of July, 1923, was fixed for the commencement of the taking in of the evidence in this case, and in fact the petitioners have been presenting their evidence on the 2nd, 3rd, 5th and 6th days of said month.

8. That judging from the testimony of the witnesses already presented, including among them the herein two petitioners, the evidence of the adverse parties hereto do not seem to affect in any way the decision in this case.

9. That on July 6, 1923, the petitioners presented an amended motion wherein they ask the Honorable Court to order the respondent Collector of Internal Revenue to furnish the data mentioned in said amended motion.

With the foregoing narration of the different stages which this case has already undergone, and without any attempt to here discuss the right of petitioners to obtain

what they ask for in their amended motion, nor the materiality or admissibility in evidence of the data which they request, as well as the question of whether the preparation of such data is physically and legally possible, inasmuch as our points of view are set forth in a separate writing, we wish to respectfully submit to this Honorable Court: (a) that in view of the writ of preliminary injunction issued in this case, the provisions of said Act 2972 could not be put into effect; (b) that the suspension of the effectiveness of said Act is causing great and irreparable losses to the public coffers, losses which the Philippine Legislature intended to avoid by the promulgation of said Act; (c) that to permit the petitioners to submit the testimony which they consider as evidence, and to subpoena all the Chinese merchants in the Philippines and all other persons whom they wish to call as witnesses, whether they support or not the petitioners' contention, would cause as a result this case to be interminable and the enforcement of the aforementioned Act to be suspended for many years, besides the unnecessary work caused to this Honorable Court; (d) that the lengthening of the hearing of this case for an indefinite time would prevent, as a consequence, the provisions of said Act 2972, the validity and constitutionality of which are presumed, from being given force and effect for a time likewise indefinite, to the loss of the public treasury, detriment of the interests of the community and against the sound principles of good government.

WHEREFORE, the respondents, by the undersigned Assistant Fiscal, emphatically oppose all pretensions of the petitioners which tend to keep this case pending for an indefinite time, and therefore respectfully pray this Honorable

Court to limit the time for the presentation of the evidence in this case.

Manila, July 9, 1923.

ALFONSO FELIX
Assistant Fiscal of the City of Manila—In behalf of the respondents.

On the 11th day of July, 1923, the Supreme Court issued the following order:

1. Petitioners pray that the date for the submission of the case be postponed, subject to reassignment upon the conclusion of the proofs. Motion granted and the Clerk is directed to report when the proof is all taken, in order that the Court may set a date for the argument and submission of the case.

2. Respondents oppose all pretensions of the petitioners which tend to keep this case pending for an indefinite time and pray the Court to limit the time for the presentation of the evidence in this case. The motion is so phrased as to permit of no definite resolution, except that the Court indicates to the parties that its resolution of March 31, 1923, was formulated in order that every fact and circumstance which would aid the Court in deciding the main question at issue might be available, and that, inasmuch as practically three months have elapsed since the promulgation of this order, the parties should hasten the taking of the proof.

3. Petitioners move the Court to require the respondent Collector of Internal Revenue to furnish as proof in the case the following data: (1) The names and addresses of all Chinese merchants, companies and corporations engaged in business in the Philippine Islands; (2) the amount of sales tax paid each year by each

merchant, company, corporation (Chinese) for the years 1918 and 1922; (3) the amount of income tax paid by each Chinese merchant, company, and corporation for each year for years 1918 and 1922; (4) the total amount of penalties paid by Chinese merchants, companies and corporations for each year for the years 1918 and 1922;—and this is opposed by the respondents. In connection with this motion, the Court could not grant the same, as it stands, without violating section 30 of Act No. 2833, the Philippine Income Tax Law, and section 2716 of the Administrative Code, but believes that to require the Collector of Internal Revenue to furnish a statement showing the total amount of the sales tax paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922, the total amount of the income tax paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922, and the total amount of the penalties paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922, would not be casting too heavy a burden on the office of the Collector of Internal Revenue, and would not be violative of the law, and thus should be furnished both for the information of the petitioners and the Court. Mr. Justice Johnson did not take part.

On July 11, 1923, counsel for respondents presented the following motion:

(CAPTION AND TITLE OMITTED)

Counsel for the petitioners have presented an amended motion dated July 6, 1923, in which they ask this Honorable Court to require the respondent Collector of Internal Revenue to furnish, in order to use them as proof in this case, all the data specified in said amended motion and to which we refer hereinafter.

The respondents opposed this pretension, and before arguing their opposition desire to manifest that Mr. Juan Posadas, Collector of Internal Revenue, who, in the session of July 5, 1923, was called as a witness by the petitioners, and to whom the latter asked for the same data that they now pretend to obtain from him by means of an order of this Court, did not refuse to furnish said data, and all that he said, as may be seen by reading the transcript of the stenographic notes taken of his testimony, is that the Bureau of Internal Revenue does not have the statistics which they ask for, and that the preparation of such statistics requires much time and numerous personnel. To these reasons may now be added another, namely, that the Bureau of Internal Revenue has no appropriation to employ the necessary personnel to prepare said statistics.

After alleging these reasons we shall now set forth the grounds which the respondent Collector of Internal Revenue has to object to his being required to furnish the data which they ask of him, and which grounds are as follows:

(1) The names and addresses of all the Chinese merchants, companies and corporations doing business in the Philippine Islands.

(a) All the licenses issued to merchants are not filed in the Bureau of Internal Revenue, but are delivered to the taxpayers, and the collectors who are the municipal treasurers keep the stubs.

(b) What is filed in the Bureau of Internal Revenue are the coupons of the receipts issued in favor of the taxpayers and in said coupons the nationality is not stated.

(c) Each license of a merchant contains five coupons of payment, and more than a hundred thousand licenses are issued each year.

(d) In order to revise and separate by nationalities the coupons of one year (more than 500,000), it would be necessary to employ about one hundred men for two months.

(e) The result of such revision would not be affected, if we take into consideration that there are many Filipinos with Chinese surnames as for example, Yangco, Yaptinchay, Sy-Yap, Sy-Quia, Lim and one thousand others and that on the other hand there are many Chinamen with Christian names such as Pio Barreto, Vicente Camara Ida, Jose Alindogan, and many others aside from the fact that many Chinese partnerships and corporations bear the partnership or corporation name which is not Chinese, and that in many Filipino partnerships and corporations there are Chinese capitalists and stockholders.

(2) The amount of sales tax paid by each Chinese merchants, company and corporation in the years 1918 and 1922.

(a) They would have to revise about a million coupons (issued in the two years 1918 and 1922) in order to demonstrate the amount paid by each Chinese merchant, company and corporation and as we said in the preceding number the result would not be exact.

(b) Section 2716 of the Administrative Code prohibits the publication of the data asked for under this number.

(3) The amount of the income tax paid by each Chinese merchant, company and corporation for each of the years 1918 and 1922.

(a) Section 30 of Act 2833 prohibits the publication of data asked for in this number. On the other hand, the preparation and presentation of said data would be unneces-

sary and useless because not all the Chinese merchants are subject to the payment of income tax nor to the presentation of income tax returns.

(b) The preparation of such data requires the task of examining all the income tax returns presented during said years, about 6,800 in 1918 and about 16,000 in 1922, in order to see the amount paid by each Chinese merchant, company and corporation.

(4) The totol amount of penalties paid by Chinese merchants, companies and corporations for each of the years 1918 and 1922.

(a) The same reasons adduced in Nos. 1, 2 and 3 may be repeated here.

* * *

If with said data it is pretended to show that 60% of the volume of commerce of the Philipines is in the hands of the Chinese, we desire to manifest that our answer expressly admits that fact, and the preparation and presentation of such data, even if it be materially and legally possible would be completely unnecessary.

But the petitioners say in their memorandum of July 9, 1923, copy of which we have just received at this moment, (July 11, 1923, 8:45 A. M.), that such data are of vital importance in order to resolve the question of the reasonableness of Act 2972. To this manifestation, we would answer saying first that the reasonableness of a law would not be affected by such data, and, second, even if it would be affected, this Honorable Supreme Court has held in various cases, among which may be cited those of Churchill, et al vs. Rafferty, 32 Phil., 580, and Tajanlangit et al vs. Peñaranda et al, 37 Phil., 155, that "it is not incumbent upon the courts to pass upon the wisdom, convenience or necessity of law."

See also 25 R. C. L. pp. 807 and 808.

In order to meet the declaration of Mr. Posadas that the preparation of the statistics desired requires much time, the petitioners cited the Bill of Exceptions of the case of Young vs. Rafferty, G. R. No. 10951 (Exhibit C). We are glad that opposing counsel have cited this case because that gives us the opportunity to call the attention of this Honorable Supreme Court to the certified copy of the attached circular letter which the Collector of Internal Revenue then issued to all the Municipal Treasurers of the Philippines and to all the agents of Internal Revenue and their assistants, which circular corroborates entirely the testimony of Mr. Posadas that in the preparation of the tabulated statement which appears at page 7 of said Bill of Exceptions (Exhibit C) a special census was necessary.

As may be observed, the circular is dated February 3, 1913, and said tabulated statement was only presented as proof on March 23, 1925, that is to say, two years, one month and two days after the issuance of the circular.

Another of the pretensions of counsel for the petitioners, and which really surprises us, is their tenacious insistence to pretend to represent all the Chinese of the Philippines. By the title of this proceeding, their clients are only Yu Cong Eng and Co Liam, and although it is true that they allege that they institute this cause for the benefit of all persons who may be found in the same situation, such allegation does not make all the Chinese of the Philippines their clients nor does it authorize them to renounce in their name the privilege of secrecy to which they have the right and which is granted to them by sections 2716 of the Administrative Code and section 30 of Act 2833.

Before closing this memorandum, we desire to manifest that there being no such statistics as they ask for in

the Bureau of Internal Revenue, and even without taking into consideration the reasons which we have adduced, the petitioners have no right whatever to require the Collector of Internal Revenue to employ his time and that of his subordinate personnel in preparing the data which they desire and that the Bureau of Internal Revenue should incur the expenses necessary in the preparation of said data for the benefit of the petitioners. There is none and there can be no legal provision which would support so absurd a pretension.

For the foregoing considerations, the undesigned Assistant Fiscal respectfully ask the Honorable Supreme Court that the amended motion of the petitioners of July 6, 1923, be denied.

Manila, July 11, 1923.

ALFONSO FELIX
Assistant Fiscal of the City of Manila in representation of the respondents.

I hereby certify that the facts alleged in the preceding writing are true according to my best knowledge and belief.

JUAN POSADAS, Jr.,
Collector of Internal Revenue.

Subscribed and sworn to before me this 11th day of July, 1923, in the City of Manila, P. I., by Juan Posadas, Jr., affiant exhibited to me his Personal Cedula No. F—15, issued at Manila, P. I., on January 4, 1923.

V. ALBERT
Clerk of the Supreme Court.

On the 11th day of July, 1923, the petitioners filed the following:

(CAPTION AND TITLE OMITTED)

OBJECTIONS TO MOTION OF RESPONDENTS OF JULY 9, 1923, TO LIMIT TIME FOR THE PRESENTATION OF PETITIONERS PROOFS

The sum and substance of the allegations of this motion stripped bare are that counsel for the petitioners are conducting their case in bad faith by presenting immaterial testimony, and that they intend to continue presenting similar testimony for an indefinite period of time in order to postpone the date when their clients may have to comply with Act 2972.

But for the inexperience of the author of the motion and the usual accompaniment of such inexperience we should resent what amounts to a gross insult.

We have been offering testimony showing the impossibility of compliance by the Chinese merchants of the Philippines with Act 2972, showing that the enforcement of Act 2972, in so far as it prohibits the merchant from keeping books of account in his own language prevents him from supervising or managing his own business and would result in his having to deliver such management over to foreigners; showing that the expense of employing bookkeepers to keep books in a language other than Chinese would exceed in some cases the total income of the merchant and in other cases would equal or exceed his total sales and income tax, resulting in the first instance in the inevitable discontinuance of the business, and in the second instance of double or treble taxation according to the fact; and

showing that there are no unemployed competent bookkeepers available to fill the positions which would be created by the enforcement of Act 2972.

We expect to offer evidence showing that Act 2972 is wholly unnecessary as a fiscal measure.

Under the present system quarterly reports as to the total sales for each month are made by the Chinese merchants to the Bureau of Internal Revenue in Spanish or English. This report consists of the each months sales filled into a report form prescribed by the Bureau and is compiled with on behalf of the Chinese merchants by some employee or outsider whose knowledge includes Arabic numerals. These monthly totals are obtained by adding up the sales shown in the sales book of each merchant which is kept in the Chinese language.

The Bureau of Internal Revenue has in its employ faithful Chinese accountants for the purpose of examining the books of the Chinese merchants, and if they have not a sufficient number of such Chinese accountants, there is no reason why they may not employ more at reasonable salaries from the more than one-fourth of the entire population of the world who use the Chinese language, and many of whom are competent to check up books of account kept in the Chinese language.

So far as we know, no one ever suggested the necessity of requiring the keeping of such books in any language other than Chinese until the administrative order to keep a daily sales book in English or Spanish was made by former Collector of Internal Revenue, Rafferty, on the 1st of January, 1913, under the provisions of Section 1 Subsection (j) of Act 2339. This order was declared unconstitutional and void by this Honorable Court in the case of Young vs. Rafferty, 33 Phil., 556.

It follows from what we have said that whether the time necessary to present our proofs may amount to a few weeks or even a few months, the Bureau of Internal Revenue cannot suffer to any appreciable extent.

As long as the testimony which the petitioners are offering, or which they propose to offer in the future be pertinent to the issues there can be no more reason or auhority for limiting the time of its presentation than in any other case. On the contrary, the vast importance of the case would render such limitation much more unjustifiable than in an ordinary litigation.

The testimony which we are offering and which we expect to offer is in support of the allegations of our petition. The arbitrary and unexplained assertion of inexperienced counsel for the respondents to the effect that the testimony which we are offering is immaterial is rendered still more inexcusable by the fact that respondents saw fit to deny practically all of the allegations of the petition and particularly those allegations as to the impossibility of the Chinese merchants keeping their own books in any language other than Chinese, as well as the impossibility of their understanding or checking such books if kept by bookkeepers of another race If the allegations upon this subject in our petition are considered immaterial by respondents, why were such allegations denied in the answer? By such denial the author of the motion of July 9 is convicted of himself making necessary the presentation of the proofs which he now alleges are causing the Government so much damage.

The time it may be necessary to consume in the taking of proofs will depend to a considerable extent upon whether or not the author of the motion of July 9 changes his attitude with reference to permitting the respondent

Collector of Internal Revenue to furnish counsel for the petitioners necessary data from the public records of the latter's office. We quote from the testimony of the Acting Collector of Internal Revenue, Mr. Posadas taken at one of the recent hearing as follows:

MR. GIBBS:

Q. Now, will you or the Fiscal furnish me with the statistics which have already been prepared for this trial?

A. The fiscal must say. I have given him certain information and if he desires to give you this information, he may.

Q. What information have you furnished to the fiscal?

MR. FELIX: Objected to on the ground

A. I do not remember what I have given him, as we have given definite information.

Q. In writing?

MR. FELIX: Objected to, as the information is of a confidential character.

A. As I have said, I do not remember.

Q. Please state the data which you remember having furnished the fiscal.

MR. FELIX: As in one of the previous questions which is related to this part of the testimony, the fiscal was referred to, I will state for my part that I am willing to furnish the data which he has furnished me, so long as the party who asks for it agrees to offer it in evidence, because if the purpose is merely to get access to our documents, the request is without right.

Q. Do you wish to state under oath, Mr. Posadas, that you don't remember what data you furnished is writing to the fiscal?

MR. FELIX: I wish to state to the witness that he is not required to state the data which he has furnished, so long as this is confiden-

tial, and we are not required to furnish it to the petitioners.

A. In view of the statement of the fiscal, I refuse to answer the question.

Q. This data which you have furnished to the fiscal, are they or not taken from your files?

MR. FELIX: The same objection.

A. Yes sir.

Q. And you have no other motive for refusing this data, aside from the objection of the fiscal?

A. Yes, because the fiscal is representing us in this case, and we must submit to his counsel in regard to the production of documents.

Q. And this purpose, as you understand it, is to obstruct the course of the proofs of the petitioners?

MR. FELIX: I object to the use of the word "obstruct" and move to strike it from the record, because the refusal to consider a petition for something to which they have not the right does not constitute an obstruction, and I object to the witness answering the question, as being offensive to the witness and to the respondents, and I suggest to the witness that he do not answer the question."

(pp. 55-56 English transcript testimony)

For the reasons stated we earnestly protest against the suggested limitation of time within which to present our proofs.

Manila, P. I., July 11, 1923.

Resfectfully submitted.

PALMA & LA O,
GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS.
Attorneys for Petitioners.
302 Roxas Bldg., Manila.
P. I.

On the 13th day of July, 1923, the petitioners filed the following motion:

(CAPTION AND TITLE OMITTED)

MOTION

COME NOW the petitioners and respectfully move the Honorable Court to require the respondent Collector of Internal Revenue to furnish to petitioners the names and addresses of all Chinese merchants in the Philippine Islands in order that petitioners may obtain the written consent of each and all of said merchants to the divulgence by the respondent Collector of the annual income and sales tax of such merchants.

That upon the furnishing of such information by the respondent Collector, the petitioners will obtain all possible dispatch the written consent of such merchants of the divulgence of the information requested and will thereupon again apply to the Court for an order requiring the respondent Collector to furnish a statement as to the annual income of each of said Chinese merchants and the amount of sales tax paid by each of them.

That petitioners have no other means of establishing by competent proof the income and sales tax of each of said Chinese merchants except by examining each one of them as witnesses.

That the proof of the income and sales tax of each of said Chinese merchants is vitally material for the purpose of establishing the allegations of petitioners with reference to the impossibility of complying with Act No. 2972, in that in the case of many of said merchants it will appear that their incomes are not sufficient to pay the expense of

employing a bookkeeper to keep their books of account in any language other than their own, and in that it will appear that in the cases of many of such merchants the expense of employing a bookkeeper to keep their books of account in any language other than Chinese would be equal to or in excess of the total sales tax and income tax paid by them, thereby amounting to double or treble taxation.

That if the information requested be furnished by the respondent Collector it will greatly expedite the presentation of proofs.

ARGUMENT.

With reference to the contention of the respondents that there are some Chinese who do business exclusively under Christian names and some Chinese mestizos who have Chinese names, and for that reason the respondent Collector will be unable to certify with certainty as to whether or not all the merchants with Chinese names are Chinese, or as to whether or not he may have included all of the Chinese merchants who do business under Christian names, we reply that such instances of Chinese doing business under Christian names or of mestizos doing business under Chinese names are rare and that the names of any of the merchants as to whose nationality there may be doubt may be omitted. Moreover, upon first obtaining the names and addresses of the Chinese merchants, in addition to obtaining their consent to the divulgence of their income and sales tax by the respondent Collector, we will obtain a statement from them as to whether or not they are of Chinese nationality, and will thereby eliminate any doubt as to the nationality of each and all of the merchants whose names and

addresses may be furnished by the Respondent Collector as requested in this motion.

Manila, July 13, 1923.

Respectfully submitted,

GIBBS & McDONOUGH,
PALMA & LA-O
By (Sgd.) A. D. GIBBS
Attorneys for the Petitioners,
302 Roxas Bldg., Manila.

On the 13th day of July, 1923, the Supreme Court issued the following order:

It having been brought to the attention of the Court that during the taking of the evidence in the case of Yu Cong Eng vs. W. Trinidad et al., R. G. No. 20479, before the commissioner appointed by this Court, the official interpreter of the Court of First Instance, Sebastian Domingo, whose services were requisitioned by the commissioner at the hearing, after arguing with one of the attorneys for the petitioners walked away and left the hearing while it was in progress, without just cause or permission, thus obstructing the said hearing and causing its temporary suspension, it appearing furthermore that the reasons given by said Sebastian Domingo, when he was called to explain his conduct, are not satisfactory, the Court is of the opinion that the said Sebastian Domingo is guilty of contempt of Court and he is hereby fined in the sum of ₱5.00 which he must pay unto the Office of the Clerk of this Court within twenty-four (24) hours from receipt hereof, without prejudice to his filing charges, if any, against the attorney or attorneys questioning his mode of interpretation. Mr. Justice Johns dissents.

On the 14th day of July, 1923, the petitioners filed the following motion:

(CAPTION AND TITLE OMITTED)

MOTION.

COME NOW the undersigned and respectfully move this Honorable Court to instruct the Clerk, Mr. Albert, to suspend the taking of testimony in the above entitled case until not earlier than the middle of August of the present year.

This motion is based upon the fact that Mr. A. D. Gibbs has been and is now directing the prosecution of said action; that this Honorable Court has required all arguments in cases pending on appeal before it to be made within the present month; that the said A. D. Gibbs has four cases of considerable importance to be argued before this Honorable Court on the 18th, 23rd, 27th and 31st days of the present month; that the preparation for argument of said cases, together with the current business of his office and the matters pending in the Courts of First Instance will consume all of the time of the said Gibbs during the month of July and will render it impossible for him to make the necessary preparation for the presentation of further proofs in the above entitled action; that the postponement of the taking of proofs until the middle of August will undoubtedly expedite the termination of the case by enabling counsel for the petitioners to select such proofs as may not be cumulative; that furthermore, the furnishing by the respondent Collector of the data heretofore requested in the motions of petitioners now pending before this Court will enable counsel to further abbreviate their proofs and the necessity for some of the proofs which petitioners would otherwise be compelled to present in the form of oral testimony of Chinese merchants will be obviated by the data thus furnished

by the respondent Collector, and for that reason time will be saved in the presentation of proofs by awaiting compliance by the respondent Collector with the orders of this Honorable Court to furnish such data.

Manila, P. I. July 14, 1923.

Respectfully submitted,

GIBBS & McDONOUGH,
PALMA & LA O.
By (Sgd.) A. D. GIBBS
Attorneys for the Petitioners.
302 Roxas Bldg. Manila, P. I.

On the 17th day of July, 1923, the Supreme Court issued the following order:

1. Counsel for the respondents moves the Court that *se sirva ordenar que se borre, tache y descarte todo el segundo párrafo de la primera página, así como la palabra "inexperienced" de la línea décima, página 3, del memoradum suscrito y presentado en este asunto el 11 de julio de 1923, por el Abogado A. D. Gibbs.* Motion denied, the Court being of the opinion that no reflection on the professional reputation of the attorney for the respondents was intended.

2. Counsel for the respondents further moves that the Court concede and fix the number of days for each party to present evidence. Counsel for the petitioners moves the Court to instruct the Clerk to suspend the taking of the testimony, until not earlier than the middle of August of the present year. Both motions denied, but the Court directs the suspension of the taking of the testimony until the first Monday of August, beginning with which date it is expected that counsel for both parties will, as officers of the Court, proceed diligently and expeditiously to present their evidence, in

order that the case may be submitted for the decision of the Court not later than September 1.

3. Counsel for the petitioners moves the Court to require the respondent Collector of Internal Revenue to furnish the names and addresses of all Chinese merchants in the Philippine Islands in order that petitioners may obtain the written consent of each and all of said merchants to the divulgence by the respondent Collector of the annual income and sales tax of such merchants. Motion denied, the Court being of the opinion that already as much information has been asked of the office of the Collector of Internal Revenue as can reasonably be required, without unjustly disturbing the regular operations of that office. Mr. Justice Johnson did not take part.

That on the 6th day of August, 1923, the petitioners presented the following motion:

(CAPTION AND TITLE OMITTED)

MOTION

COME NOW the petitioners by the undersigned counsel and respectfully represent to the Court:

That on July 6, 1923, they presented a motion requesting among other things the amount of sales tax paid each year by each Chinese merchant, company and corporation for the years 1918 and 1922, and the amount of income tax paid by each Chinese merchant, company and corporation for each year for the years 1918 and 1922.

That this Honorable Court in its order of July 12, 1923, held:

> "The Court could not grant the same as it stands, without violating Section 30 of Act 2833, known as the Philippine Income Tax Law and Section 2716 of the Administrative Code".

That in order to remove any possible objection to the divulgence of the information requested of the respondent Collector of Internal Revenue, the petitioners have been and still are engaged in obtaining the signatures of the Chinese merchants of the City of Manila to a written authorization couched in the following terms:

> "We the undersigned Chinese merchants of the City of Manila hereby authorize the Collector of Internal Revenue of the Philippine Islands to disclose and certify to the Supreme Court of the Philippines the amount of sales tax and the amount of income tax paid by each of us from the years 1918 to 1922, as proof in the case of Yu Cong Eng et al vs. W. Trinidad et al, R. G. No. 20479".

That petitioners have already obtained seven books or separate lists of such written authorizations, containing the signatures of more than 1,000 Chinese merchants, companies and corporations, and which are herewith presented and referred to as a part of this motion. That petitioners within a few days expect to obtain the remainder of the signatures of all the Chinese merchants, companies and corporations in the City of Manila to similar written authorizations.

WHEREFORE, petitioners in anticipation of obtaining the signatures of the remainning Chinese merchants, companies and corporations of the City of Manila, and in order to avoid delay, respectfully move the Court to require the respondent Collector of Internal Revenue to begin at once the preparation of the necessary certificate covering the amount of sales tax and income tax paid by each of said Chinese merchants, companies and corporations of the City of Manila for the years 1918-1922 inclusive, with the provision that the presentation of the same as evidence be-

fore this Court shall be subject always to the written authorization of each and all of said merchants, companies and corporations, or in the event this Honorable Court should not desire to issue the order with reference to the preparation of such certificate as to the Chinese merchants, companies and corporations whose signatures have not yet been procured, that then this Honorable Court order the said respondent Collector to prepare such certificate as to the sales tax and income tax paid by the particular Chinese merchants, companies and corporations whose signatures are subscribed to the accompanying seven books or lists of written authorizations.

That the reason for including the years 1919, 1920 and 1921 is that it is believed that the years 1918 and 1922 will not disclose a fair average of normal conditions and profits.

That the evidence as to the amount of sales or sales tax and the annual profit or income of the business of said Chinese merchants, companies and corporations is vitally important and material evidence for petitioners, and without which they cannot safely submit their case for decision; that there are no means of obtaining such evidence other than from the said respondent Collector of Internal Revenue, except by the presentation of each and all of said Chinese merchants, companies and corporations as witnesses.

Manila, P. I., August 6, 1923.

Respectfully submitted,

PALMA & LA-O and
GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS.
Attorneys for Petittioners.
302 Roxas Bldg., Manila.

CITY OF MANILA
PHILIPPINE ISLANDS } SS.

A. D. Gibbs being first duly sworn deposes and says:

That he is one of the attorneys for the petitioners in the above entitled action; that he has read the foregoing motion, and that the statements therein contained are true as he verily believes.

(Sgd.) A. D. GIBBS

Subscribed and sworn to before me this 6th day of August, 1923, affiant exhibiting Cedula No. F-7547, issued at the City of Manila, P. I., on the 10th day of Jany. 1923.

(Sgd.) V. ALBERT

On August 7, 1923, counsel for respondents presented the following:

(CAPTION AND TITLE OMITTED)

MOTION

COMES NOW the respondent Collector of Internal Revenue, thru the undersigned Assistant Fiscal, and to the Honorable Supreme Court respectfully shows:

1. That upon receipt of the resolution of this Court of July 11, 1923 (whereby he is ordered to furnish for the information of this High Tribunal and of the petitioners a statistics showing the total amount of sales tax, income tax and penalties paid by the Chinese merchants, companies and corporations during the years 1918 and 1922), he applied to the Secretary of Finance for funds to employ clerks for the purpose of preparing said statistics.

2. That the Honorable Secretary of Finance denied the petition for funds made by the respondent Collector of Internal Revenue upon the ground that the Legislature did not appropriate emergency funds for the year 1923. The correspondence on this subject is attached to this motion as an integral part hereof.

3. That in order to prepare the statement or statistics showing the total of said taxes and penalties, it would be necessary to review one by one all the coupons of said taxes and penalties corresponding to the years 1919 and 1922, which would mean a task that would require much time and personnel which the Bureau of Internal Revenue does not have.

WHEREFORE, respondents respectfully ask the Honorable Supreme Court that in view of the reasons above set forth, it reconsider its said order of July 11, 1923, and in order that this Court may be satisfied of the material impossibility to comply with said order, we respectfully suggest and ask that a commission be appointed among its members to make an ocular inspection of the documents that would have to be reviewed in order to prepare the data asked for.

Manila, P. I., August 7, 1923.

ALFONSO FELIX
Assistant Fiscal
Attorney for Respondents.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF FINANCE

BUREAU OF INTERNAL REVENUE

OFFICE OF THE COLLECTOR

MANILA

July 17, 1923.

The Honorable, the Secretary of Finance,
Manila, P. I.

SIR:

In view of the resolution of the Supreme Court, dated July 12, 1923, requiring this Office to prepare and submit a statement showing the total amount of sales tax paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922, the total amount of the income tax paid by all of the Chinese merchants, companies and corporations for the same years, and the total amount of the penalties paid by all of the Chinese merchants, companies and corporations for the said years, I have the honor to respectfully request information if any appropriation can be allotted to this Office for the employment of 10 clerks for a period of three months with compensation of P40 a month each for the purpose of preparing such statement. This Office cannot have the work done by any of the employees of this Office, without impairing the disposal of current work and the collection of taxes.

Very respectfully,

(Sgd.) JUAN POSADAS, Jr.,
Acting Collector of Internal Revenue.

DEPARTMENT OF FINANCE
Manila
1st Indorsement
July 19, 1923

Respectfully returned to the Collector of Internal Revenue, with the information that the Emergency Board has no funds available which can be allotted to the Bureau of Internal Revenue for the purpose mentioned in the within communication. The Legislature did not provide any emergency appropriation for 1923.

It will not be for the good of the service to use your present employees for purposes other than the collection of revenues which is the prime public necessity. Our estimates of income for the year 1923 have been based on increased collection and, unless efforts are made to cover the estimates, the Government may have to confront a deficit.

In order to comply with the resolution of the Supreme Court, it will be necessary to request from the Legislature the authority to employ additional personnel.

(Sgd.) MIGUEL UNSON,
Acting Secretary of Finance.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
OFFICE OF THE COLLECTOR
MANILA
2nd Indorsement
August 1, 1923.

Respectfully referred to the City Fiscal, Manila, inviting attention to the within papers, and requesting, in

view of the first indorsement hereon, that the Supreme Court be asked to reconsider its resolution dated July, 1923, requiring this Office to prepare and submit a statement showing the total amounts of sales, taxes, income taxes, and penalties paid by Chinese merchants, companies, and corporations for the years 1918 and 1922.

(Sgd.) JUAN POSADAS, Jr.,
Acting Collector of Int. Revenue.

On the 8th day of August, 1923, the petitioners filed the following objections:

(CAPTION AND TITLE OMITTED)

OBJECTIONS.

COME NOW the petitioners by the undersigned counsel and object to the granting of the motion of the respondents of August 7, 1913, praying this Honorable Court to reconsider its order of July 11, 1923, requiring respondents to furnish a statement of the total sales tax, income tax and penalties paid by Chinese merchants in the Philippines for the years 1918 and 1922 on the alleged ground that the respondent Collector of Internal Revenue has no funds with which to defray the expense of compiling the information referred to, and on the further ground that the Secretary of the Interior denied the respondent Collector's petition for an allotment of a sum of money sufficient to pay the salaries of ten clerks for three months at ₱40.00 per month, to be employed by the said respondent Collector in compiling such information.

In order to eliminate any excuse or objection on the part of the respondent Collector, petitioners hereby offer

to defray the expense of the ten clerks mentioned in the letter of the respondent Collector to the Secretary of the Interior (attached to respondents' motion of August 7, 1923), not only for the purpose of compiling the information covered by the order of this Honorable Court of July 11, 1923, but also for the purpose of compiling the information requested in the motion of petitioners of August 6, 1923, and which last mentioned information may be compiled at the same time and as a part of the compilation of the information covered by the said order of July 11, 1923.

Manila, P. I., August 8, 1923.

Respectfully submitted,

PALMA & LA-O and
GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS
Attorneys for Petitioners,
302 Roxas Bldg., Manila.

On August 9, 1923, counsel for respondents presented the following:

(CAPTION AND TITLE OMITTED)

REPLY TO PETITIONERS' OBJECTION TO RESPONDENTS' MOTION OF AUGUST 7, 1923.

Reading the objection presented by the petitioners to this motion, it seems that they believe that ten employees would be sufficient to prepare in three months the data asked of the respondent Collector of Internal Revenue. Such belief is not supported by the allegations of our motion. It is true that the Collector of Internal Revenue has asked the Honorable Secretary of Finance for an appropriation

to employ ten persons for three months to devote them to said work, but said petition of so small a personnel only shows that the respondent Collector of Internal Revenue did not dare to ask for a greater appropriation of funds for fear that the same would be denied. *The best proof of the material impossibility for the Bureau of Internal Revenue to comply with the order referred to in our motion may be had by making an ocular inspection of the tremendous pile of papers* to be revised one by one in the preparation of the data or statistics applied for. For that reason this representation respectfully reiterates its petition that this Honorable Supreme Court, or a committee of its members that may be appointed, make an ocular inspection.

RESPONDENTS' OBJECTION TO PETITIONERS' MOTION OF AUGUST 6, 1923.

Our motion of August 7, 1923, really constitutes an objection to the motion of the petitioners which we now consider, because if the Bureau of Internal Revenue is not in a position to prepare a statistic of the total amount of sales tax, income tax and penalties paid by the Chinese merchants, companies and corporations during the years 1918 and 1922, with greater reason may it be maintained that said Bureau would not be in a position to do greater work in preparing not only the statistics for those two years, but also those corresponding to the years 1919, 1920 and 1921.

Before closing, we desire to call the attention of this Court to the resolution of July 17, 1923, in which it is provided that the attorneys for both parties should proceed with diligence in the presentation of their proofs, *in order that this cause may be submitted for decision not later than*

September 1. To accede to the pretension of the petitioners would mean that this case cannot be submitted on that date, but on the contrary its termination would have to be delayed for a long and indefinite time, and it must not be forgotten that in this case a preliminary injunction has been issued which prevents the respondents from complying with the provisions of a law which, up to this date, has not been, and we hope will not be, held unconstitutional.

In view of the foregoing, the undersigned representation respectfully asks the Honorable Supreme Court to accede to the petition contained in our motion of August 7, 1923, and consequently to deny the petitioner's motion of August 6, 1923.

Manila, August 9, 1923.

(Sgd.) ALFONSO FELIX
Assistant Fiscal
Attorney for Respondents.

On the 16th day of August, 1923, the Supreme Court issued the following order:

With reference to the motions of recent date presented by both parties in the case of Yu Cong Eng et *al.*, Petitioners, *v.* W. Trinidad *et al.*, *Respondents*, R. G. No. 20479.

In which petitioners move: "WHEREFORE, petitioners in anticipation of obtaining the signatures of the remaining Chinese merchants, companies and corporations of the City of Manila, and in order to avoid delay, respectfully move the Court to require the respondent Collector of Internal Revenue to begin at once the preparation of the necessary certificate covering the amount of sales tax and income tax paid by each of said Chinese merchants, companies and corporations of the City

of Manila for the years 1918-1922, inclusive, with the provision that the presentation of the same as evidence before this Court shall be subject always to the written authorization of each and all of said merchants, companies and corporations, or in the event this Honorable Court should not desire to issue the order with reference to the preparation of such certificate as to the Chinese merchants, companies and corporations whose signatures have not yet been procured, that then this Honorable Court order the said respondent Collector to prepare such certificate as to the sales tax and income tax paid by the particular Chinese merchants, companies and corporations whose signatures are subscribed to the accompanying seven books or lists of written authorizations".

And in which respondents move: "WHEREFORE, respondents respectfully ask the Honorable Supreme Court that in view of the reasons above set forth, it reconsider its said order of July 11, 1923, and in order that this Court may be satisfied of the material impossibility to comply with said order, we respectfully suggest and ask that a commission be appointed among it members to make an ocular inspection of the documents that would have to be reviewed in order to prepare the data asked for."

It is the order of the Court that both motions be denied, reserving to the petitioners the right to offer affidavits with the consent of the attorneys for the respondents of formal matters mentioned in their motion, reserving to counsel for the respondents the right to object to any affidavit and instead to require the affiant to take the witness stand in order that he may be examined both on direct and cross-examination. Justice Johnson did not take part.

On the 16th day of August, 1923, the Supreme Court issued the following order:

The commissioner appointed to receive the evidence in case No. 20479, Yu Cong Eng *et al. etc. vs.* W. Trinidad *et al.*, having reported to this Court for a ruling, the motion of the counsel for the respondents asking that the witness for the pettioners, Simeon Ong Chang, be ordered to produce his books; and after considering the objection thereto interposed by the counsel for the petitioners, the Court ordered that the MOTION be and is hereby DENIED. Justice Johnson did not take part."

On the 4th day of September, 1923, the petitioners presented the following:

(CAPTION AND TITLE OMITTED)

EXCEPTION

COME NOW the petitioners by their undersigned counsel and except to the order of this Honorable Court of the 16th day of August, 1923, denying their motion to require the respondent Collector of Internal Revenue to furnish the information therein specified.

Manila, P. I., September 4, 1923.

Respectfully submitted,

GABRIEL LA-O
PALMA & LEUTERIO and
GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS
Attorneys for Petitioners,
302 Roxas Bldg., Manila, P. I.

On the 5th day of September, 1923, the Supreme Court issued the following order:

Considering the exception presented by the petitioners in case No. 20479, Yu Cong Eng *et al. vs.* W. Trinidad *etc. et al.*, to the order of this Court of August 16, 1923, denying their motion to require the respondent Collector of Internal Revenue to furnish information therein specified, EXCEPTION NOTED.

On the 15th day of September, 1923, the petitioners filed the following:

(CAPTION AND TITLE OMITTED)

MOTION

COMES NOW the petitioners thru their undersigned attorneys and respectfully request the permission of this Honorable Court to file the attached amended petition for prohibition in the above entitled case.

Manila, P. I., September 15, 1923.

GABRIEL LA-O, PALMA & LEUTERIO

and

GIBBS & McDONOUGH,
By (Sgd.) CHAS. A. McDONOUGH
Attorneys for Petitioners,
302 Roxas Bldg., Manila.

On the 15th day of Sept., 1923, the petitioners presented the following amendment to their original petition:

(CAPTION AND TITLE OMITTED)

AMENDED PETITION FOR PROHIBITION.

Come now the petitioners by their undersigned counsel and respectfully represent to this Honorable Court:

I.

That they are of age and residents of the City of Manila.

II.

That the respondent W. Trinidad is the duly appointed, qualified, and Acting Collector of Internal Revenue of the Philippine Islands with his office and residence in the City of Manila.

III.

That the respondet, Eulogio P. Revilla, is the duly appointed, qualified, and Acting Fiscal or prosecuting attorney of the City of Manila and a resident of the said city.

IV.

That the Honorable Pedro Concepcion is one of the duly appointed, qualified and acting judges of the Court of First Instance of the City of Manila, and also a resident of said city.

V.

That on the 21st day of February, 1921, the Philippine Legislature enacted and approved Act No. 2972 in the following language:

"No. 2972

"AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.

"*Be it enacted by the Senate and House of Representatives of the Philippines in legislature assembled and by the authority of the same*:

"SECTION 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

"SEC. 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.

"SEC. 3. This Act shall take effect on November first, Nineteen hundred and twenty-one.

"Approved, February 21, 1921".

VI

That the petitioner, Yu Cong Eng, is a Chinese merchant engaged in the lumber business at No. 696 Juan Luna, Manila; that he neither reads, writes, nor understands the English or Spanish language or any local dialect; that he keeps the books of account of his business in Chinese Characters; that by reason of his ignorance of the English and Spanish languages and of all local dialects he is unable to keep his books in any language other than his own; that even if he should employ a bookkeeper capable of keeping his books in the English or Spanish language, or in any local dialect, he would have no means of personally revising or ascertaining the contents or correctness of the books

thus kept; that the employment of such a bookkeeper, unless he should also be a linguist, would entail as a necessary consequence the employment of a translator or interpreter familiar with the Chinese language and the language or dialect in which such books might be kept in order to enable the petitioner, Yu Cong Eng, to ascertain by hearsay the contents thereof; that in the event of being compelled to employ such a bookkeeper and translator or interpreter, the petitioner, Yu Cong Eng, would then be completely at the mercy of such employees who might not only cheat and defraud him of the proceeds of his business but involve him in civil or criminal liability in the conduct of his business; that under the privisions of said Act No. 2972 petitioner, Yu Cong Eng, is prohibited from even keeping a duplicate set of accounts in his own language and would, in the event of the enforcement of said law, be compelled to remain in total ignorance of the status of his business; that for the reasons stated the enforcement of said Act would drive the petitioner, Yu Cong Eng, and the many other Chinese merchants in the Philippines, who are in like circumstances, out of business.

VII.

That the petitioner, Co Liam, is a Chinaman, and cunducts a small general merchandise business, commonly known in the Philippines as a Chinese *tienda* at No. 364 Calle Santo Cristo, Manila; that he carries a stock of goods of about ₱10,000; that his sales taxes amount to from ₱40 to ₱60 per quarter; that he neither reads, writes nor understands the English or Spanish language, or any local dialect; that he keeps the books of account of his small business in Chinese (which is the only language known to him)

without the assistance of a bookkeeper; that he has been losing money for sometime in the operation of his business, but that even in the most prosperous times the profits of his small business could never be sufficient to justify the employment of a Filipino bookkeeper or a bookkeeper of any other nationality capable of keeping his books in English, Spanish or any local dialect; that even if he could afford to employ such a bookkeeper, he would have no means of personally revising or ascertaining the contents or correctness of the books thus kept; that the employment of such a bookkeeper, unles he should also be a linguist, would entail as a necessary consequence, the employment of a translator or interpreter, familiar with the Chinese language, and the language or dialect in which such books might be kept, in order to enable the petitioner, Co Liam, to ascertain by hearsay the contents thereof; that in the event of being compelled to employ such a bookkeeper and translator or interpreter, the petitioner, Co Liam, would then be completely at the mercy of such employees, who might not only cheat and defraud him of the proceeds of his business but involve him in civil or criminal liability in the conduct of his business; that under the provisions of said Act No. 2972 the petitioner, Co Liam, is prohibited from even keeping a duplicate set of books or accounts in his own language, and would, in the event of the enforcement of said Law, be compelled to remain in total ignorance of the status of his busines; that for the reasons stated the enforcement of said Act would drive the petitioner and many other Chinese merchants or *tienda* keepers in the Philippines who are in like circumstances out of business.

VIII.

That the respondent, Collector of Internal Revenue, in his capacity as such on the 2nd day of March, 1923, inspected and seized the account books of the petitioner, Yu Cong Eng, which are in the Chinese language, informed the respondent City Fiscal of the failure of the petitioner, Yu Cong Eng, to keep his said account books in the English or Spanish language, or in any native dialect, and wrongfully and unlawfully recommended the prosecution of the petitioner, Yu Cong Eng, for the violation of said Law No. 2972; that as a result of said information and recommendation, the respondent City Fiscal wrongfully and unlawfully drafted, signed and filed a criminal complaint before the respondent, the Honorable Pedro Concepcion, as Judge of the Court of First Instance of the City of Manila, against the petitioner, Yu Cong Eng, charging him with the violation of said Law No. 2972, a copy of which criminal complaint marked Exhibit "A" for identification is attached hereto and made a part of this petition; that as a result of the filing of said criminal complaint, the respondent Honorable Pedro Concepcion, as Judge of said Court of First Instance of the City of Manila, wrongfully and unlawfully issued a warrant forthe arrest of the petitioner, Yu Cong Eng, and caused him to be arrested thereunder and will, unless restrained and prohibited by this Honorable Court, proceed to try and condemn and punish the petitioner, Yu Cong Eng, for the violation of said Law No. 2972.

IX.

That the said respondent Collector of Internal Revenue, said Fiscal of Manila, and the said respondent Judge

of the Court of First Instance, threaten to and will, unless restrained and prohibited by this Honorable Court, cause all of the other said Chinese merchants to be arrested, prosecuted and convicted under said Act No. 2972, as shown by a letter from the said respondent Collector of Internal Revenue to said respondent Fiscal of Manila, published in the Daily Bulletin of March 2, 1923, a copy of which publication market Exhibit B is attached hereto and made a part of this petition.

XI

That there are approximately 12,000 other Chinese merchants in the Philippine Islands of whom about three thousand are residents of and engaged in mercantile pursuits for profit in the City of Manila, and who are and will be similarly affected by said Act No. 2972 and the threatened criminal prosecutions thereunder; that the subject matter of the present action is one of common and general interest to all the other said Chinese merchants thus similarly situated; that by reason of their great number it is impracticable to bring them all before the Court, and that therefore petitioners bring this action for the benefit of themselves and of all other Chinese merchants similarly situated and affected as aforesaid.

XI.

That of all nationalities there are altogether about 85,000 merchants in the Philippine Islands; that of this number about 71,000 are Filipinos; that of the remaining 14,000 about 1,500 are of either American, Spanish or British nationality, and of the remaining 12,500 approximately 12,000 are Chinese; that the aggregate business transacted

by the said 12,000 Chinese merchants represents more than 60 per cent of the total business done by all the merchants in the Philippine Islands; that for the reasons stated the burden of said Act No. 2972 is imposed almost exclusively upon said 12,000 Chinese merchants, including your petitioners.

XII.

That not to exceed 10 per cent of the Chinese merchants in the Philippine Islands understand English, Spanish or any local dialect sufficiently well to be able to keep or revise their own books of account in any of those languages, and not to exceed 10 per cent of said merchants have even a working knowledge of any of said languages such as would enable them to in any manner inform themselves as to the status of books of account kept in said languages, except by means of translators or interpreters; that the profits of the business of more than one-half of said Chinese merchants are so small that they would be unable to afford the employment of foreign bookkeepers or of translators or interpreters familiar with their own language and with that in which their books of account might be kept; that for the reasons stated the enforcement of said Law would drive more than one-half of the said Chinese merchants out of business, and would cause great and irreparable damage to the business of the remainder.

XIII.

That there are no considerable number of unemployed competent bookkeepers available in the Philippines capable of keeping books of account in English, Spanish or any local dialect to fill the positions which would be created by

the enforcement of Act No. 2972, even supposing that the Chinese merchants would be able to employ them.

XIV.

That the said 12,000 Chinese merchants as shown by the records of the Internal Revenue Department, presided over by the respondent, W. Trinidad, now pay and for many years last past have been paying more than 60 per cent of the taxes levied on the total mercantile transactions of the Philippine Islands, thereby conclusively demonstrating that the said Chinese merchants faithfully and honestly record their business transactions in their own language, and that the respondent, Collector of Internal Revenue, and his agents and inspectors are, and have, at all times, been able to fully inform themselves from the books of said Chinese merchants thus kept in their own language, of all the business transacted by them; that the Chinese written language is a scientific language employed by the Chinese, Japanese, and Koreans, who constitute more than one fourth of the entire population of the world. That there are in the Philippine Islands available for employment by the Bureau of Internal Revenue enough Chinese accountants to make such inspections of the books of acount of Chinese merchants as may be necessary to insure true declarations of their sales and income. That there are 43 native languages divided into 87 local dialects in the Philippine Islands, most of which are unscientific and crude in character; that as petitioners are informed and believe and therefore allege the fact to be, there are no accountants available for employment by the Bureau of Internal Revenue capable of inspecting books of account which might be kept in many of such local dialects. For the reasons stated said Act No. 2972 is a wholly unrea-

sonable and unnecessary burden upon the said Chinese merchants.

XV.

That said Law No. 2972 is unjust and without precedent in the United States or in any other country where the Chinese merchant is doing busines, is shown by the resolutions adopted and signed by the principal business houses in the City of Manila, the American Chamber of Commerce of China; the American Chamber of Commerce of Tientsin; the Executive Committee of the Foreign Trade Bureau of the Seattle Chamber of Commerce; the Seattle Chamber and Commercial Club; the Portland Chamber of Commerce; the Foreign Trade Committee of the San Francisco Chamber of Commerce, and the Merchants' Association of New York, copies of which are respectively marked Exhibits C, D, E, F, G, H, I, and J, and attached hereto as a part of this petition.

XVI.

That said Act No. 2972 is void for the reason that the subject thereof is not expressed in its title, as required by section 3 of the Act of Congress of August 29, 1916, known as the Philippine Autonomy Act.

XVII.

That said Act No. 2972 is in violation of the Constitution of the United States and of the provisions of the Act of Congress of August 29, 1916, known as the Philippine Autonomy Act, in that it arbitrarily impairs and destroys a natural right without any express or implied legitimate purpose or tendency to preserve or promote the public welfare, or to accomplish any valid object of police

power; in that it is wholly unreasonable and unnecessary as an exercise of police power; *in that it conflicts with articles 33 et seq.* of the Code of Commerce of the Philippines, requiring merchants to keep full sets of books of account, and with circular letter No. 467 of the B. I. R. in relation to section 185 of Act No. 2339, as amended by the decision of the Supreme Court of the Philippines in the case of Young *vs.* Rafferty (33 Phil., 556), requiring all merchants who do not keep complete books of account to keep an Internal Revenue sales book, and which provisions of the Commercial Code and circular letter No. 467 do not require the books of account therein mentioned to be kept in any particular language or languages; in that the enforcement of said Act No. 2972 would compel the Chinese merchants to stop keeping books thereby exposing them to heavy indirect losses by reasons of their failure to comply with the said provisions of the Code of Commerce and to the severe penalties for failing to comply with the provisions of the said Circular Letter No. 467 or any subsequent regulations requiring certain books of account to be kept for the inspection of the Bureau of Internal Revenue; in that said Act deprives your petitioners and all other Chinese merchants in the Philippines of their natural right and liberty to employ their own language in the transaction of their private business without due process of law; in that it deprives your petitioners and all other Chinese merchants in the Philippines of their property without due process of law; in that it is discriminatory amounts to class legislation and denies your petitioners and other Chinese merchants the equal protection of the laws, and in that the penalties provided for the violation of the Act are so severe as to intimidate and preclude the Chinese merchants from resorting to the Courts

to test the validity of said Act, and for that further reason it denies to the Chinese merchants the equal protection of the laws and exposes them to the closing and loss of their business and property without due process of law.

XVIII.

That said Act, if intended, as alleged in the answer, to require books of account to be kept in English, Spanish or a local dialect, is too indefinite and uncertain to enable your petitioners and other Chinese merchants to comply therewith, for the reason that it fails to designate what books of account, if any, shall be kept in the languages mentioned.

XIX.

That in instituting, entertaining, and proceeding with the prosecution of said criminal action against the petitioner, Yu Cong Eng, and in otherwise enforcing and threatening to enforce said Law No. 2972, as hereinbefore set forth, said respondents are acting without and in excess of their jurisdiction; that the enforcement of said Law No. 2972 will cause multitudinous and persecuting criminal prosecutions, and the prosecution of said criminal action against the petitioner, Yu Cong Eng, and the threatened institution and prosecutions of similar criminal actions against your petitioner, Co Liam, and other Chinese merchants of the Philippine Islands is causing, and will, unless restrained and prohibited by this Honorable Court, continue to cause your petitioners, and all of the other Chinese merchants of the Philippine Islands, great and irreparable disturbance and injury in their business and property rights and interests, and for which they have no other plain, speedy and adequate remedy in the ordinary courts of law by bill of exceptions, appeal, or otherswise.

XX.

That the right of the petitioner, Yu Cong Eng, to defend and appeal if convicted in the said criminal action already filed against him, or in any succeeding similar criminal action which may be instituted against him, and the right of the petitioner, Co Liam, and of each and all of the other Chinese merchants of the Philippines to defend, and, in the event of conviction, to appeal to the Supreme Court, is an entirely inadequate remedy for the reason that similar prosecutions are threatened and may and will be instituted for each new entry or daily or weekly transaction recorded in their books of account in the Chinese language, and the threats and fear of repeated prosecutions and of the imposition of the severe punishment prescribed for the violation of said Law No. 2972, would and will compel your petitioners and many others of said Chinese merchants to discontinue business or to comply with the provisions of said Law to their great and irreparable injury.

XXI.

That the petitioners and the twelve thousand or more other Chinese for whose benefit this action is prosecuted are now, and for many years last past have been, domiciled in the Philippine Islands and engaged in business as merchants in said Islands; that as such merchants, they are entitled under the treaties now in force between the United States and China to all the rights, privileges and immunities enjoyed in the Philippine Islands by the citizens and subjects of the 'most favored nation'; that under said treaties the petitioners and said other Chinese are entitled to the same rights, privileges and immunities as the citizens and subjects of Great Britain and Spain; that said treaties have the same

force and effect in these Islands as do the laws of the Congress of the United States; that said Act No. 2972 is in violation of said treaties in that it deprives the petitioners and said other Chinese merchants of their liberty and property, whereas it imposes no burden whatever upon the citizens and subjects of Great Britain and Spain; that the enactment of said Act No. 2972 has caused a vigorous protest on the part of the Chinese foreign office to the United States Minister to China and to the Insular authorities at Washington, and has caused and is causing prejudice to the good understanding and friendly relations between the Chinese and United States governments, as shown by a cable from United States Minister Crane from Peking to the Secretary of State at Washington, dated April 28, 1921, a letter from Mr. Frank McIntyre, Chief of the Bureau of Insular Affairs at Washington, to Governor Wood of the Philippine Islands dated July 14, 1922, and a cable from the same party to Governor Wood, dated October 10, 1922, copies of which marked Exhibits K, L and M respectively, are hereto attached and made a part of this amended petition.

XXII.

That the petitioners deny each and every allegation of the special defense of respondents' answer.

WHEREFORE, your petitioners pray judgment: (a) declaring said Law No. 2972 unconstitutional and void; (b) granting an order against the respondents and each of them in conformity with section 516 of the Code of Civil Procedure, in relation with section 226 of the same Code, to absolutely desist and refrain from further action in said criminal cause against the petitioner, Yu Cong Eng, and from instituting or prosecuting any other criminal actions under said Law No. 2972.

Your petitioners further pray that, pending the determination of this petition, a preliminary injunction issue in conformity with section 517 of the Code of Civil Procedure, enjoining the respondents and each of them and their agents or employees from proceeding further with the said criminal action against the petitioner Yu Cong Eng, or from instituting or prosecuting any other criminal actions under said Law No. 2972.

Your petitioners further pray that the proceedings herein be expedited by order of this Honorable Court, limiting the time to answer or demur of respondents to ten days after citation.

Manila, P. I., September 15, 1923.

Resfectfully submitted,

GABRIEL LA O,
PALMA & LEUTERIO,
and GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS
Attorneys for Petitioners.
302 Roxas Bldg., Manila, P. I.

CITY OF MANILA
PHILIPPINE ISLANDS } SS.

YU CONG ENG being first duly sworn, deposes and says:

That he is one of the petitioners in the above entitled action; that the foregoing amended petition has been read and interpreted to him; that he knows the contents thereof, and that the facts therein stated are true to the best of his knowledge and belief.

(Sgd.) YU CONG ENG.

Subscribed and sworn to before me this 15th day of September, 1923, affiant exhibiting Cedula No. F—2526 issued at the City of Manila, P. I., on the 2nd day of January, 1923.

(Sgd.) EULALIO CHAVES
Notary Public
My commission expires
December 31, 1924.

Doc. No. 473
Page No. 2
Not. Reg. for 1923.
Book II

EXHIBIT A

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE COURT OF FIRST INSTANCE OF MANILA.

THE PEOPLE OF THE PHILIPPINE ISLANDS, Complainant,
— vs —
YU CON ENG, Accused.

COMPLAINT.
Violation of the Accounting Law.
Cause No. 25551.

The undersigned accuses Yu Cong Eng of the violation of Act No. 2972 of the Philippine Legislature, committed as follows:

That on or about and during the time included between the 1st of January and the 27th of February, 1923, both dates included, the said accused was engaged in commerce for the

purpose of profit in the City of Manila, Philippine Islands, having for this purpose an establishment at No. 696 Calle Juan Luna, district of Binondo of said city and in the exercise and development of his business the said accused wilfully, illegally, criminally and fraudulently kept and caused to be kept the books of account of his said business corresponding to said period of time, solely in Chinese instead of keeping them or causing them to be kept in English, Spanish, or any dialect, thereby hindering and obstructing the authorized agents and representatives of the Govrnment of the Philippine Islands and of the City of Manila in the examination and revision of the said books of account and obstructing in this manner the ascertainment and determination of the entire amount which said accused, owed, owes or shall owe for licenses, permits, taxes and contributions.

In violation of the Law.

ALFONSO FELIX,
Asistant Fiscal

Subscribed and sworn to before me this 7th day of March, 1923, in the City of Manila, Philippine Islands, by Alfonso Felix, Assistant Fiscal of the City of Manila.

(Sgd.) PEDRO CONCEPCION
JUDGE OF THE COURT OF FIRST INSTANCE.

A preliminary investigation has been made in this case under my direction and witnesses examined under oath in accordance with the provisions of Sec. 2465 of Act No. 2711 of the Philippine Legislature.

ALFONSO FELIX
Assistant Fiscal.

Subcribed and sworn to before me this 7th day of March, 1923, in the City of Manila, Philippine Islands, by Alfonso Felix, Assistant Fiscal of the City of Nanila.

(Sgd.) PEDRO CONCEPCION
JUDGE, COURT OF FIRST INSTANCE.

Witnesses:

Juan Evaristo	Internal Revenue
Sy Siangco	Internal Revenue

Bond recommended ₱2,000.00.

EXHIBIT B

MANILA DAILY BULLETIN

Manila, P. I., Friday, March 2, 1923.

"I have the honor to inform you that Yu Cong Eng, a Chinese merchant doing business at 696 Juan Luna, Manila, has violated the provisions of section 1 of Act No. 2972 of the Philippine Legislature which went into effect on January 1 of the present calendar year, penalized under section 2 of the same Act, by keeping his books of account from January 1, to February 27, 1923, in Chinese and not in English, Spanish, or any native dialect as required by law."

In the letter quoted above Collector of Internal Revenue Trinidad recommends the first prosecution under the bookkeeping law, but it is understood that more such recommendations will follow wherever it is found that the law is being violated.

The Collector stated yesterday that the Yu Cong Eng case is not asked to be filed as a test case, to determine the constitutionality of the law; he said that every violation encountered will be dealt with similarly.

EXHIBIT C

RESOLUTION.

WHEREAS, the undersigned merchants, doing business in the Philippine Islands, consider that a certain law recently passed by the Legislature of the Philippine Islands and approved by ex-Governor-General Harrison, known as Act No. 2972, and which makes it illegal after a certain date therein mentioned for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in a language other than English, Spanish, or a native dialect, and providing heavy penalties for violations thereof, is very prejudicial to the Chinese community; and

WHEREAS, the business and commerce of the Philippine Islands are largely conducted by Chinese merchants, and a law like the one under consideration, which if the practicability of its enforcement be assumed, would necessitate the Chinese giving up their business establishments, would vitally affect the economic situation of trade in the Islands and react in an important way most unfavorably upon all merchants and business of every kind in the country, and the undersigned accordingly conceive that they have a proper and direct interest, aside from other considerations, in having said Act No.2972 repealed; and

WHEREAS, the law will work unnecessary hardship on the Chinese merchants by putting them to extra expense for the employment of bookkeepers using one of the aforesaid languages; and

WHEREAS, most of the Chinese merchants can neither speak, read, nor write any of the languages prescribed as aforesaid, and, consequently, would be unable to direct their

bookkeepers or examine their books for themselves; and in view of the large number of Chinese merchants resident in the Philippine Islands and the relative scarcity of competent bookkeepers, particularly those having both the requisite bookkeeping ability and the ability to translate into Chinese, it will be absolutely impracticable for the Chinese merchants to comply with the terms of the aforesaid law, be they ever so willing to do so; and

WHEREAS, the enforcement of the said law will deprive great number of the Chinese people of their means of livelihood and will thus be contrary to the fundamental ideas of justice and fair play; and

WHEREAS, the law is wholly unnecessary in nature, its enactment not having been heard of in any country than the Philippine Islands; and

WHEREAS, the Islands are just passing through one of the most acute financial crises in their history, and the enforcement of such a law will augment the severity of the economic depression on account of its detrimental effects on the local Chinese merchants; and

WHEREAS, the Chinese people have contributed no small part in the economic development of the Philippine Islands and in our dealings with them we have found them to be honest, reliable, and public-spirited; and

WHEREAS, for the aforesaid reasons and other reasons too apparent to be set forth herein, we deem this law highly unwise, extremely unjust, utterly impracticable of enforcement, greatly inconvenient for all concerned, absolutely unnecessary, and its early repeal a matter of simple justice and expediency; therefore, be it

RESOLVED, By the undersigned firms representing several nationalities other than Chinese, to express, and we do

hereby express, our full concurrence with the just and reasonable protest of the Chinese colony against the enforcement of this law; and be it further

RESOLVED, That copies of this resolution be sent to the Philippine Legislature, His Excellency the Governor-General, the Congress of the United States, and the President; and that the contents hereof be made known to the Filipino and American public, to the end that they cooperate with the Chinese colony to secure the repeal of this anomalous law.

Signed:

Pacific Comercial Co.,
By H. D. Pond

Standard Oil Co. of New York
By J. Maddocks.

Lutz & Zuelling,
F. E. Zuelling, member of firm.

W. H. Anderson & Co.,
W. H. Reynolds, Vice-Pres.

Armour & Co.,
By C. D. Evans.

Lambert Company,
C. H. Cady, Mgr.

W. F. Stevenson & Co., Ltd.,
By R. Toovey.

Henry W. Peabody & Co.,
B. M. Bryan.

For Findlay Richardson & Co., Ltd.
J. M. Maitlond, Dir.

Juan Ysmael & Co., Inc.,
By Felipe Ysmael,
Cashier.

Babcock & Templeten, Inc.,
W. R. Babcock.

Hike Shoe Palace,
T. G. Henderson, Mgr.

The Admiral Line
(Pacific Steamship Co.),
J. B. Armstrong.

Struthers & Dixon, Inc.,
By J. T. Kinney.

Getz Bros, & Co., of the Orient, Ltd.,
By H. M. Weiss, Branch Mgr.

Wise & Co.,
R. E. Humphreys, Pres.

Per pro Mitsui Bussan
Ksisha, Ltd.
F. Funatsu, Mgr.

Insular Lumber Co.,
C. C. Quackenbush,
Asst. Mgr.

I. Beck, Inc.,
A. Nelson Thomas, Mgr.

Vacuum Oil Company
Ray W. Berdeau, Mgr.,
Manila.

For Warner Barnes & Co.,
Ltd.
J. T. Figueras.

Smith, Bell & Co., Ltd,
H. T. Fox. President.

Erlanger & Galinger, Inc.,
By S. Feldstein.

Connells Bros. Co.,
Per pro C. Orton.

Asia Banking Corporation
H. J. Belden, Mgr.

Hashim Franklin Car Co.,
E. A. Acod, Pres. & Mgr.

The Hashim Com'l & Trad-
ing Co., Ltd.,
By A. T. Hashim, Pres.
& Mgr.

Squires Bingham Co.,
C. D. Squires, Sec. &
Treas.

U. S. Paper & Hdwr. Co.,
Inc.,
By W. Jarck, Vice Pres.

Ker & Co.,
Catton Neil Enginerr &
Machy. Co.,
D. M. Sample, Mgr.

Forbes, Munn & Co., Ltd.,
Y. R. Selkirk, Mgr.

Ayala Y Cia.,
A. Melian.

MacLeod & Co., Inc.,
By H. E. Price, Agent.

China, Japan & S. T. Trad-
ing Co.,
A. S. Cuttridge, Mgr.

For London & Scattish Assn.
Corp., Ltd.,
G. C. Hunter, Agent.

The Auto Supply Co.,
W. W. Weston, Mgr.

For the International
Banking Corp.
S. Williams, Mgr.

Philippine-American Drug. Co.,
(Successors to Botica Boie Co.,)
Inc.,

Philippine Education Co.,
H. J. Hafelton, Secy.-Treas.

Colorado Mining Co.,
H. B. McCoy.

Pacific Mail S. S. Co.,
E. J. Brown, Acting Agent.

C. M. Cotterman & Co.,
Inc.,
C. M. Cotterman, Pres.

C. Alkan, Inc.,
P. Sintzenich.

Clark & Co.,
G. T. Merrman, Sec.-Teas.

Yangco, Rosenstock & Co.,
Inc.,
C. W. Rosenstock, V. P. & G. M.

Milton E. Springer Co.,
Milton E. Springer, Pres.

Manila Button Foctory, Inc.,
By H. Scharnberg, Pres.

H. E. Heacock & Co.,
S. F. Gaches, Pres.

La Fabrica de Cervesa de
(San Miguel Brewery),
Por Antonio Brias, Gen. Mgr.

Ed. A. Keller & Co., Ltd.,
E. A. Keller, Mgr.

Union Ins. Sec. of Canton, Ltd., Toyo Kisen Kaisha.
C. L. Goorich.

J. R. Redfern & Co., Ltd.,
C. C. Hunter, Vice-Pres.

The McCullough Printing Co.,
F. H. Stevens, Pres.

Denniston, Inc.,
J. C. West, Asst. Mgr.

Henson & Orth.
Willitts & Patterson, Ltd.,
G. C. Arnold, Pres.

pp. Levy Hermanos,
Leton Dryfus.

Camara Supply Co.,
J. C. Cottinger,

The Robert Dollar Company,
Victor C. Hall.

Walter E. Olsen & Co.,
L. McCall, Vice-Pres.

W. Solomon.
The Globe Druge Store,
P. W. Ruston.
B. E. Green.

Englebert & Muñoz
Jose Muñoz y Lopez.

The Cooper Company,
I. B. Findlay, Asst. Gen. Mgr.

Manila Tire & Rubber Co.,
D. M. Burchfield, Mgr.

Los Angeles Pacific Nav. Co.,
J. R. Wilson, Gen. Agent.

J. R. Wilson, Inc.,
By J. R. Wilson.

International Com. Co.,
H. H. Buck

Muller, Maclean & Co., Inc.,
H. H. Sage, Agent.

Muller & Phipps (Manila), Ltd.,
John Meyer, Mgr.

Manila Commercial Co.,
By Antonio Gimenez, Manager.

La Insular, Loan Office and Jewelry Store
Juan Javier, S and C.
Juan Javier, Manager.

Commercial Pacific Cable Co.
P. J. Warwood, Superintendent

Atkins, Kroll & Ci.,
J. G. Jefferys, Manager.

The St. Louis D. G. Store,
A. Ortiz, Vice-Pres.

Norton & Harrison Co.,
F. C. Hagedorn, Vice-Pres.

American Express Co.,
W. D. Inman.

Philippine Refining Corporation
Fred. A.: Leas, Manager.

M. J. Ossorio.

The Eastern Extension, Australasia and China Telegraph Company, Ltd.
F. A. Betts, Superintendent.

For the Yokohama Specie Bank, Ltd.,
T. Kasuya, Manager.

Cooperative Agricola de Filipinas
Jose Ventura, Manager.

Electrical Supply Co., Inc.,
Montgomery Ward & Co.,
75 Escolta.
By J. F. Quinn.

Monarch Trading Company Inc.,
By J. E. Harris, Jr. Pres.

Por El Meridian,
J. B. Lammoglia.

Levy & Blumm, Inc.,
Angel P. Adia, Secretary.

Frank & Co., Inc.,
G. Rank.

Flecha Paint Lumber Co.,
G. E. Carpender, Pres.

General Supply Co.,
S. Thomas, Gen. Mgr.

Welch, Fairchild & Co., Ltd.,
G. G. Gordon.

Frank Waterhouse & Company.
A. G. Henderson, Local Manager.

Laing & Wright,
F. C. Laing.

Alhambra Cigar and Cigarrette Mfg. Co.
Geo. Bordfeldt & Co..
Fred. E. Krieghoff, Account.

Singer Sewing Machine Co.,
G. E. Brewster,

Christenson, Hanify & Weatherwax,
C. P. Ladd.

Clarke & Larkin,
W. W. Larkin.

The Caswell Import Co., Inc.,
T. Ebsen, Manager.

The Bank of the Philippine Islands,
Juan de Ormaechea, Vice-Pres.

The Koster Company,
By W. N. Chatfield.

P. P. Neuss, Hesslein & Co.
A. C. Kenff.

LUIS XIQUES,
Luis Xiques.

John Rothschild & Co.,
G. P. Sorensen. Resident Mgr.

Purkis & Herber,
By G. G. Purkis,

J. P. Helbronn Co.
By Ames, G. Bellis, Treas.

Ohta Development Co.,
By C. Hawagara, Mgr.

The Island Trading Co., Inc.,
By M. Goldenberg, Manager.

Garcia Bosque, Pomar & Ciia.,
Sucesores de la Vda. de E. Bota
C. Garcia Bosque.

Lime Kilns, Inc.,
By W. C. Taylor.

Harry E. Keller Electric Co., Inc.,
For Harry E. Keller, Pres.

E. Viegelman & Co., Inc.,
By Wilhelm Jarck, Vice-Pres.

Gibson Furniture Company, Inc.,
W. F. Daland, Pres., & Treas.

S. E. Diaz & Company, Inc.,
S. E. Diaz, Pres. & Gen'l Mgr.

Martin Vaguedes, of Cranston Engineering Co.

Brias Roxas, Inc.,
By Jose Rubio.
Thurlow & Company, Inc.,
By R. W. Thurlow.

Rubio Bros.,
M. Brias, Asst. Mgr.

EXHIBIT D

RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE, AMERICAN CHAMBER OF COMMERCE, APRIL 12, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal, after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands, to keep their books of account in languages other than Eng-

lish, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of merchandise throughout the Islands; and

WHEREAS, many, and probably the greater part, of these industrious Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be it unanimously

RESOLVED, That we, the American Chamber of Commerce of China, give our support to the attached protest of the Chinese General Chamber of Commerce, Shanghai, in the belief that the omission of the Chinese language from the above-mentioned law is an unfortunate oversight and that either this omission should be promptly remedied by amendment or the law repealed.

AMERICAN CHAMBER OF COMMERCE
OF CHINA,
(Sgd.) W. H. CHAPMAN, Secretary.

EXHIBIT E

RESOLUTION PASSED BY THE AMERICAN CHAMBER OF COMMERCE

AT TIENTSIN, CHINA, MAY 12, 1921.

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth

and development of insular commerce, and have provided a most important part of the machinery for distribution of merchandise throughout the Islands; and

WHEREAS, many, and probably the greater part, of these industrious Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be it unanimously

RESOLVED, That we, the American Chamber of Commerce in Tientsin, give our support to the protest of the Chinese Chamber of Commerce of Tientsin, in the belief that the omission of the Chinese language from the above-mentioned law is an unfortunate oversight and that either this omission should be propmtly remedied by an amendment or the law repealed.

EXHIBIT F

RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE OF THE FOREIGN TRADE BUREAU, SEATTLE CHAMBER OF COMMERCE, ON MAY 18, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in language other than English, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippines

have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of American merchandise thoughout the Philippines; and

WHEREAS, many, and probably the greater part, of these Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be it

RESOLVED, That the Executive Committee of the Foreign Trade Bureau of the Seattle Chamber of Commerce join in protest against Act No. 2972 of the Philippine Legislature, and request our congressional delegation in Washington to use its influence on behalf of the interests of the Chinese merchants in the Philippines to bring about the repeal of this law; be it also

RESOLVED, That copy of this resolution be forwarded to the Chamber of Commerce of the United States of America for whatever action it may deem necessary.

EXHIBIT G

RESOLUTION ADOPTED BY THE SEATTLE CHAMBER OF COMMERCE AND COMMERCIAL CLUB, MAY 23, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Is-

lands to keep their books of account in language other than English, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippine Islands have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of American merchandise thoughout the Philippines; and

WHEREAS, many, and probably the greater part, of these Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; and

WHEREAS, said law appears to be an arbitrary and unfriendly act toward a friendly nation; therefore, be it

RESOLVED, That the Seattle Chamber of Commerce and Commercial Club request President Harding to cable General Wood and ask him to investigate and report on this matter, and also that copies of this resolution be forwarded to the Washington State delegation in Congress; and be it also

RESOLVED, That copy of this resolution be forwarded to the Chamber of Commerce of the United States of America, and to the Chamber of Commerce in Portland, San Francisco, and Los Angeles, for whatever action they may deem necessary.

EXHIBIT H

RESOLUTIONS ADOPTED BY THE FOREIGN TRADE DEPARTMENT OF THE PORTLAND CHAMBER OF COMMERCE AND APPROVED BY BOARD OF DIRECTORS OF THE PORTLAND CHAMBER OF COMMERCE, MAY 25, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as "An Act to define the language of keeping books of accounts and providing a penalty for the same" (No. 2972), which Act permits only the use of such languages as English, Spanish, or native dialects and prohibits the use of the Chinese language; and

WHEREAS, the commerce of the Philippine Islands has been carried on and developed to a large extent for the last 400 years by the Chinese; and

WHEREAS, the greater portion of these Chinese merchants will find it impracticable to conform to the regulations of the above law and probably force a majority of them to discontinue business; and

WHEREAS, this law appears to be an unfriendly act towards a friendly nation and would hinder rather than develop our commerce with other nations which we are so anxious to build up; therefore, be it

RESOLVED, That the Portland Chamber of Commerce call these matters to the attention of the President of the United States, and Congress, requesting that an investigation of these conditions be made with a view to their alleviation; and be it further

RESOLVED, That copy of this resolution be forwarded to the Oregon delegation in Congress, the Chamber of Com-

merce of the United States of America, and the Chambers in the Far East.

BOARD OF DIRECTORS, PORTLAND CHAMBER OF COMMERCE,
By P. HETHERTON,
Executive Secretary.

EXHIBIT I

RESOLUTION ADOPTED BY THE FOREIGN TRADE DEPARTMENT OF THE SAN FRANCISCO CHAMBER OF COMMERCE, JUNE 14, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law known as Act No. 2972, making it illegal, after November 1, 1921, for any person, company, firm or corporation, engaged in business in the Philippine Islands, to keep their books of account in any language other than English, Spanish, or the Philippine dialects, and providing heavy penalties for violation of the law; and, further, that the Chinese merchants of the Philippines have to a very important degree been responsible for the growth and expansion of American business in the Philippine Islands, inasmuch as they have provided a very important organization for the distribution of American goods; and

WHEREAS, many of these Chinese business men would be forced, by this law, to abandon their business in the Philippines, representing probably some two hundred million dollars in invested capital; be it therefore

RESOLVED, That the Foreign Trade Committee of the San Francisco Chamber of Commerce give its support to

protests of the Chinese merchants of the Philippine Islands against Act No. 2972 and further urge action by the proper officials of the United States Government towards repealing this law, or securing an amendment which will permit the Chinese merchants of the Philippines to continue their business on an equitable basis of competition.

EXHIBIT J

THE MERCHANT'S ASSOCIATION OF NEW YORK PREAMBLES AND RESOLUTIONS ADOPTED JULY 6, 1921.

WHEREAS, the Legislature of the Philippine Islands has enacted a law, No. 2972, February, 1921, providing that after November 1, 1921, it will be illegal for any person, company, firm, or corporation, engaged in business, industry, or other activity for profit in the Philippine Islands to keep their books of account in a language other than English, Spanish, or a native dialect, and that violators of this law will be punished by a fine or imprisonment, or both; and

WHEREAS, such a provision of law is, we believe, unparalleled, unjust, and unnecessary, other countries, including the United States, not having this or any other similar requirement; and

WHEREAS, a large part of the business of the Philippine Islands has for years been in the hands of Chinese merchants, these merchants at present being reported to pay approximately 70 per cent of the business taxes of the country; and

WHEREAS, probably the greater part of these Chinese merchants find it impracticable to keep their books of account in any of the above-mentioned languages, which will

therefore force them to withdraw from business in the Philippines; and

WHEREAS, this law does not fairly consider these Chinese merchants, but seems rather to be aimed directly at them, and amounts, therefore, to class legislation; and

WHEREAS, the enforcement of the law and the withdrawal of a large proportion of the Chinese merchants from business in the Philippines will seriously and permanently injure the continuation and development of American business in that country; now, therefore, be it

RESOLVED, That the Merchant's Association of New York hereby records its strong protest against this law and promises its support to efforts being made to bring about its repeal or modification; and be it further

RESOLVED, That copies of these preambles and resolutions be forwarded to the President of the United States, the Secretary of War, the President of the Senate, the Speaker of the House of Representatives, the New York delegation in Congress, the Acting Governor-General in the Philippines, and the President of the Senate and Speaker of the House of Representatives in the Philippines.

EXHIBIT K

Peking
Dated April 28, 1921
Rec'd. 11:15 a. m.

Secretary of State,
Washington D. C.
169, April 28, 5 p. m.

Chinese Foreign Office vigorously protest Philippine's

municipal authority requiring all bookkeeping in English, Spanish or Philippine dialect. Commercial ataché and Legation fear great indignation aroused by this legislation and that immediate results thereof may prejudice American-Chinese commercial and friendly relations. Text by mail.

CRANE.

A true copy of record on file
in this office.

J. M. WOOLFOLK
Assistant Secretary to the Governor-General.
WSB

EXHIBIT L

WAR DEPARTMENT
BUREAU OF INSULAR AFFAIRS
Washington, July 14, 1922.

General Leonard Wood,
Governor-General of the Philippine Islands,
Manila, P. I.

My dear General:

The Legislature has postponed the date on which the bookkeeping law, which was the subject of correspondence last year, is to go into effect. This, however, has not prevented correspondence through the Chinese Legation and through commercial bodies who feel that the law is an imposition on their Chinese customers in the Islands.

We are of the opinion here that the law is fundamentally unwise. The object of it is apparent, and any reasonable measures to prevent frauds on the revenue collections are not open to criticism. It is felt, however, that frauds may be committed in any language, and while keeping books in Chinese, or other foreign languages, is an inconvenience to the tax collector, this inconvenience is greatly over-balanced by that of the merchant having his books kept in a language which he does not understand. A reciprocal provision in China would meet our serious protest.

These arguments, of course, are familiar to you, and I am desirous simply of having you understand that the Secretary and those of us who have studied the matter here feel that it would be a great relief if the law were definitely repealed.

We understand that the law did not originate with Filipinos. It was first recommended by an American collector of internal revenue and subsequently by an American Governor-General. This, however, does not prevent the public from looking on it as a Filipino legislative act and as an indication of the sort of act which the Philippine Legislature might enact in dealing with foreigners.

I believe, therefore, that the Legislature, in order to put itself right, should repeal this act.

With kind regards I am

Very sincerely,

(Sgd.) FRANK McINTYRE,
Chief of Bureau.

A true copy of record on
file in this office.

J. M. WOOLFOLK
Assistant Secretary of the
Governor-General.

Manila, Aug. 14, 1923.

EXHIBIT M

Executive Form No. 5.

Cablegram Requiring Action Must Have IMMEDIATE Attention.

CABLEGRAM
RECEIVED
Office of the Governor-General
of the Philippine Islands
Manila
Washington, October 10, 1922.

No. 228.
Wood,
Manila.

Referring to letter from your office August 2nd and letter from Bureau of Insular Affairs dated July 14th, bookkeeping law, Secretary of War is strongly of the opinion that legislature should repeal law at coming session as it accomplishes little and is obstructive of good understanding with our neighbors.

McIntryre.
A true copy of record on file
in this office
J. M. WOOLFOLK
Assistant Secretary to the
Governor-General.

Record.

On October 6, 1923, counsel for respondents presented the following:

(CAPTION AND TITLE OMITTED)

COMES NOW the undersigned Assistant Fiscal in representation of the respondents herein, and to the Honorable Supreme Court manifests that he reserves the right to interpose a demurrer to the petition, as again amended, as soon as this Court resolves the motion of the petitioners dated September 15, 1923, in which they ask leave to present amended petition.

Manila, October 6, 1923.

ALFONSO FELIX
Assistant Fiscal
Attorney for Respondents.

On the 8th day of October, 1923, the Supreme Court issued the following order:

> Considering the motion of the attorneys for the petitioners in case No. 20479, Yu Cong Eng *et al. vs.* W. Trinidad *et al*, praying that they be permitted to file an amended petition for prohibition, MOTION GRANTED and the amended petition accompanying said motion be attached to the record without prejudice to the right of the attorney for the respondent to amend the demurrer interposed therein.

On October 17, 1923, counsel for respondents presented the following: :

(CAPTION AND TITLE OMITTED)

NEW DEMURRER

COMES NOW the undersigned E. P. Revilla, Fiscal of

the City of Manila, in his own behalf, and in that of his co-defendants in the above entitled cause, and, believing that the defects of the original petition herein have neither been cured nor corrected by the last amendment which the petitioners have just made to their petition, again demurs to the said amended petition upon the following grounds, to wit:

1. That the facts alleged in the amended petition do not constitute a cause of action against the respondents.

2. That this Honorable Supreme Court has no jurisdiction to grant the remedy prayed for in the amended complaint.

3. That the petitioners have another plain, speedy and adequate remedy.

So as not to make the record of this case more voluminous, respondents hereby confine themselves to reproducing and reiterating the reasons which they have adduced in their writing of March 23, 1923, on the occasion and in support of their first demurrer which they presented herein.

FOR SAID REASONS, respondents again ask this Honorable Supreme Court to dismiss the petition for prohibition presented by the petitioners and to order the latter to pay the costs. Respondents further ask the preliminary injunction issued against them by order dated March 7, 1923, be set aside.

Manila, October 15, 1923.

E. P. REVILLA
City Fiscal
Attorney for Respondents.

On the 18th day of October, 1923, the Supreme Court issued the following order:

> Considering the amended demurrer filed by the respondent in case No. 20479, Yu Cong Eng *et al. vs.* W. Trinidad *et al.*, the Court ordered that the same to attached to the record.

On the 24th day of October, 1923, the petitioners filed the following:

(CAPTION AND TITLE OMITTED)

ANSWER TO DEMURRER OF THE RESPONDENTS TO AMENDED PETITION.

COME NOW the petitioners by their undersigned attorneys and in answer to the new demurrer of the respondents, respectfully refer this Honorable Court to the arguments and citations of authority presented against the demurrer of the respondents to the original petition and which demurrer was by this Honorable Court overruled.

Inasmuch as the amended petition contains all of the allegations of the original petition, as well as additional grounds for granting the petition, it is not deemed necessary to present further arguments at this time in support of the amended petition.

Upon the final submission of the case on its merits, the recent decision of the Supreme Court of the United States

holding statutory provisions similar to Act No. 1972 unconstitutional will be cited.

Manila, P. I., October, 23, 1923.

Respectfully submitted,

GABRIEL LA-O, PALMA & LEUTERIO
and GIBBS & McDONOUGH,
By A. D. GIBBS.
Attorneys for the Petitioners.
302 Roxas Bldg., Manila.

On the 25th day of October, 1923, the Supreme Court issued the following order:

> Considering the answer to demurrer of the respondents to amended petition in Case No. 20479, Yu Cong Eng *vs.* W. Trinidad *et al.*, it is ordered that the same be attached to the record for future consideration.

On December 13, 1923, the petitioners filed the following motion:

(CAPTION AND TITLE OMITTED)

MOTION.

COME NOW the petitioners by their undersigned counsel and respectfully represent to the Court that Juan Posadas Jr., the Acting Collector of Internal Revenue, who in the trial of the above entitled action is in effect substituting Mr. Trinidad as respondent after having testified on direct examination as an expert on the subject of the necessity of enforcing Act 2972, refused to answer on cross examination the hypothetical question disclosed by the following excerpt of the stenographic transcript of the testimony of the said Juan Posadas:

Q Upon the assumption that it would be possible to employ sufficient Chinese accountants to inspect the books of account of the Chinese merchants as the books of account of all other merchants are inspected, what advantage would result from the enforcement of Act 2972.

A The advantage consists in that it would enable a greater number of the employees of the Bureau of Internal Revenue to inspect intelligently the books of the tax payer.

Q But you have not yet accepted the hypothesis that there would be sufficient Chinese accountants to make the proper inspections of the books of account.

A I cannot accept that hypothesis in view of the experience of the office itself, which demonstrates that it has never been able to count upon getting a sufficient number of capable accountants to inspect the books of the Chinese merchants.

Q Neither do we care to accept your idea as to this point and therefore, we are putting to you a hypothetical question and you will do me a great favor if you will answer that hypothetical question, and for this purpose it is necessary that you accept the hypothesis upon which the question is based.

FELIX I object to the question precisely because it is based upon a hypothesis which is not accepted by the witness and he could hardly therefore answer it.

WITNESS: As I have stated, I cannot accept that hypothesis that the Bureau of Internal Revenue could find a sufficient number of Chinese accountants, in view of the fact that the experience of the office itself has demonstrated that we have never been

able to find a sufficient number of Chinese accountants to make those inspections.

Q Can you do me the favor to accept this hypothesis and answer *my question upon this hypothesis and* you can then later on establish the fact that it is a false hypothesis. I wish to explain to you that it is a common practice to put hypothetical questions upon the theory of the attoney interrogating the witness and that it is the duty of the witness to answer the hypothetical question, even though he may not consider that the hypothesis be true, and I therefore ask you again to answer the question upon the assumption that it would be possible to employ sufficient Chinese accountants to inspect the books of the Chinese merchants, what advantage would there be then in enforcing Act 2972.

FELIX: I repeat the objection made to the former question.

WITNESS: I believe that I have complied with my duty when I answered similar questions put to me. Now I cannot accept an assumption which in practice has not been justified.

MR. GIBBS: I ask the Fiscal as the attorney representing the respondents to instruct the witness that it is his duty to answer my hypothetical question.

MR. FELIX: I cannot oblige the petitioners as they desire for the following reasons: In order that the answer of the witness may be a proper one, and in accordance with his knowledge, he should avail himself as a basis for his answer of the knowledge which he has and not having that knowledge of the existence of these facts, he can hardly answer the question, as he lacks the basis therefor, and there would not be a correct conclusion drawn.

MR. GIBBS: I ask that the Commissioner submit to the Supreme Court for decision the question of whether or not the witness should answer the hypothetical question that I have just put. I ask that the question be submitted to the Court between now and our next session

MR. FELIX: I have not the slightest objection to the submission of the question as indicated."

That the said witness, as shown by the foregoing excerpt refused to answer such hypothetical question on the ground that he could not accept as true the hypothesis embodied in said question. Petitioners respecfully represent that they have alleged in their amended petition and have offered proofs to establish the fact that there are sufficient competent Chinese accountants or inspectors available for employment by the Collector of Internal Revenue to inspect the books of the Chinese merchants of the Philippine Islands, and that therefore, the question which the witness has refused to answer embodies a hypothesis based upon the proofs of the petitioners and is for that reason competent.

The question is material in that it bears directly upon the question of the necessity and reasonableness of Act 2972.

It is elementary that a hypothetical question may be based upon the theory of the party propounding the question, provided that theory be supported by proofs, or provided the party propounding the question promises to present proofs in support thereof. (22 C. J., p. 708 et seq. and cases cited.)

For the reasons stated, we respectfully pray that the

witness be ordered to answer the question hereinbefore set forth.

Manila, P. I., December 13, 1923.

Resfecfully submitted,

GABRIEL LA-O, PALMA & LEUTERIO and GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS
Attorneys of Petitioners,
302 Roxas Bldg.,
Manila, P. I.

On the 14th day of December, 1923, the Supreme Court issued the following order:

Considering the motion of the attorneys for the petitioners in case No. 20479, Yu Cong Eng et al vs. W. Trinidad et al., praying, for the reasons therein stated, that the witness, the Acting Collector of the Internal Revenue, be ordered to answer the hypothetical question as stated therein, the same is hereby GRANTED, permitting the witness, however, to explain his answer and reserving to the prosecuting at torney his right to except to this ruling.

On the 4th day of January, 1924, the Supreme Court issued the following Subpoena Duces Tecum:

(CAPTION AND TITLE OMITTED)

JUAN POSADAS, Acting Collector of Internal Revenue, Manila.

GREETINGS:

You are hereby ordered to appear before the un-

dersigned at his Office, No. 47 Gral. Luna, W. C., today at 2:30 P. M.

FAIL NOT, under the penalty of the law.

GIVEN by the Honorable E. FINLEY JOHNSON, Acting Crief Justice of the Supreme Court of the Philippine Islands this 4th day of January of 1924.

(Sdg.) V. ALBERT
Clerk, Supreme Court, P. I.

On the 8th day of January, 1924, the taking of evidence in this case before the Clerk of the Supreme Court, acting as commissioner, which was commenced on July 2, 1923, was terminated. Said evidence reads as follows.

UNITED STATES OF AMERICA
PHILIPPINE ISLADS

IN THE SUPREME COURT OF THE
PHILIPPINE ISLANDS

YU CONG ENG & CO LIAM, etc.,
Petitioners,
vs.
W. TRINIDAD, etc.,
Respondents.

R. G. No. 20479.

PROCEEDINGS.

The above entitled cause came on for hearing on this 2nd day of July, A. D. Nineteen Hundred and Twenty Three, before the Clerk of the Supreme Court of the Philippine Islands, as Commissioner, to take such evidence as the parties

thereto desired to submit, and the following proceedings therein were had, to wit:

APPEARANCES:

For the Petitioners:

Messrs. Gibbs & McDonough, by Mr. Gibbs.

Mr. Gabriel La'O.

Mr. Rafael Palma.

For the Respondents:

Mr. Felix, Assistant Prosecuting Attorney, City of Manila.

Interpreter:

Mr. Lim.

Reporters:

Mr. T. W. Parkin (English).

Mr. V. Onrubia (Spanish).

STIPULATION.

It is hereby stipulated that the Deputy Clerk of the Supreme Court, in the absence of Mr. Albert, may act in the place and stead of Mr. Albert as Commissioner to take the evidence.

MR. FELIX: I ask for the exclusion of witnesses.

MR. GIBBS: I agree to all prospective witnesses being excluded except Dee C. Chuan, the President of the Chamber of Commerce. I want him to remain in here; I will want to consult him from time to time, and I object to his exclusion, and will not consent to it.

MR. FELIX: I have no objection to having the parties remain, that is, Yu Cong Eng and Co Liam, and any other witness who may be an attorney, but I object to the presence of any other witness.

MR. GIBBS: I also desire to state of record that

every Chinaman who may be called as a witness in this case, or who is a merchant in the Philippine Islands, is one of my clients in this case, and for this reason he is not subject to exclusion.

MR. FELIX: I desire to call attention to the fact that the title of the case, the testimony of which we are taking here, is very clear, and it is not shown that there are other petitioners except Yu Cong Eng and Cu Liam, and therefore, not being parties, have no right to be present.

MR. GIBBS: Unless the fiscal agrees to Mr. Dee C. Chuan, the President of the Chamber of Commerce, remaining present during the examination, I withdraw my consent to the exclusion of any of the Chinese here present, for the reason that they are parties to this action, and are not subject to this exclusion.

MR. FELIX: I am not agreeable to Mr. Gibbs' statement, and wish to state that if the Chinese who are to testify in this case desire to remain in the court room, they may do so, provided it is understood that they run the risk that the witnesses so called cannot testify later on, and that if they do so, it will be over my objection.

MR. GIBBS: I withdraw my consent to the other witnesses leaving the court room.

MR. FELIX: I wish to state that if the other witnesses remain in the court room while one witness is testifying, I will object his presentation as a witness for the petitioner.

YU CONG ENG was then sworn as a witness on behalf of the petitioner.

DIRECT EXAMINATION BY

MR. GIBBS:

Q. How long have you been engaged in that business?

A. Yu Cong Eng, 47, 696 Juan Luna, Manila, lumber mer-

chant and contractor.

Q. Where is your business located?

A. Juan Luna, Manila.

Q. What number?

A. 696.

Q. How long have you been engaged in that business?

A. About twenty years, more or less.

Q. What is your nationality?

A. Chinese.

Q How many employees have you in your business?

A Sometimes I have hundreds of employees; at other times I have from forty to fifty employees, and at other times it runs into the hundreds.

Q What is the average number of employees?

A I wish that you would specify. Do you refer to employees of the lumber yard, or to those who are employed on contracts?

Q I refer to employees of your establishment, and not to laborers who may be employed temporarily.

A Less than thirty individuals.

Q What is the nationality of your employees?

A The larger part of them are Chinese.

Q Can you read or write any other language than the Chinese language?

A With the exception of Chinese I cannot write any other language, and I can read very little.

Q A very little of what?

A As for example Spanish; I can read a very little of that.

Q Could you read or understand books of account kept in Spanish or any other languages than Chinese.

A I can not.

Q Do you keep books of account?

A Yes sir, as a merchant.
Q In what language?
A Chinese.
Q Can you read and understand the books of account which are kept in your establishment?
A Yes sir.
Q How many bookkeepers have you?
A I have one clerk or bookkeeper so called, but I have other employees who are working in the store who help keep the books also.
Q What nationality is your bookkeeper?
A Chinese.
Q And those who help him in keeping his accounts?
A Chinese also, because our books are kept in Chinese.
Q Do you have salesmen in your establishment?
A Yes sir.
Q What nationality are they?
A The larger part of them are Chinese.
Q What is the nationality of any other salesmen you have outside of Chinese?
A I have only one assistant salesman, who is a Filipino, and I have various Filipinos who work as laborers, cargadores.
Q Do your Chinese salesmen keep memoranda of the sales made by them?
A Yes sir.
Q And what do they do with that memoranda?
A For example, when a customer comes in and purchases something, he makes a note of the effects purchased.
Q Are the sales made by your salesmen entered in the books of account kept by your establishment?
A Naturally.

Q And in what way does your bookkeeper inform himself as to the sales made by your salesmen?

A In the store we have duplicate memoranda, one copy is taken by the purchaser, and the clerk making the sale retains one copy, and at night this copy is delivered to the bookkeeper so that he can make the necessary entries.

Q Do you remember approximately what your sales tax was for the year 1922?

A Approximately about three thousand pesos, more or less.

Q What income tax did you pay for the year 1922 on your business establishment?

A Last year I did not pay any income tax.

Q Why not?

A Because business during the last year was bad, and the business did not make any money. In years previous to the year 1922, I believe we paid income tax.

Q Can you remember approximately what income tax you paid for the years 1918, 1919, 1920, and 1921?

MR. FELIX: Object to the question, as the best evidence would be the income tax receipt.

MR. GIBBS: In view of the objection, I will withdraw the question and put another.

Q Do you remember approximately what your profits were for the years 1918, 1919, 1920, and 1921?

MR. FELIX: Objected to as the books of account would be the best evidence.

A I remember that in each of these years the business made money, but at this moment I am not in position to state the amount of profits that I made.

Q Can you not state approximately?

A So much time has passed I do not rememebr exactly,

but in average times, every year we made more than ten thousand pesos on an average.

Q Can your bookkeeper keep books in any other language than Chinese?

MR. FELIX: Objected to as the witness is not qualified to testify as to that. The best witness would be the bookkeeper himself.

A He does not know.

Q For how long do you preserve your books of account?

A For five years, but after five years we do not keep them.

Q Have you all your books of account for the last five years?

A I believe I have kept them, because I haven't thrown away the books.

Q Have you paid sales tax on all the sales made by you since the sales tax law was enacted?

A Naturally.

Q Have your books of account always been open to inspection by the officials of the Bureau of Internal Revenue?

A They frequently inspected my books.

Q Has there ever been any irregularity discovered or complaint made about your reports of sales to the Bureau of Internal Revenue?

A About five, six, or seven years ago, there was a question raised for the following reasons. We will suppose that we received a contract for ten thousand pesos, and suppose that the expenses occasioned by this contract amounted to eight thousand five hundred pesos. We were ignorant of the provision of the law, and we made it to appear in our books to show only the cost of the materials, that is, say eight thousand five

hundred pesos. We did not enter in the Internal Revenue book the fifteen hundred pesos of profit. This was the only question raised, and outside of that we have had no difficulty.

Q How did the Bureau of Internal Revenue discover that you omitted the fifteen hundred pesos of profits?

A This fifteen hundred pesos is only a supposition. They took the books and examined the books.

Q The Bureau of Internal Revenue, then, discovered this error by an inspection of your books kept in Chinese, did they?

A Yes sir.

Q Have there been any errors or irregularities discovered by the Bureau of Internal Revenue since that time in your books? That is, in your books of account or in your sales reports?

A No more, no sir. After this inspector who inspected my books, various inspectors came and took my books, and they all said that my book were kept in proper form, and there was no irregularity in them.

Q Do you know whether the Bureau of Internal Revenue keeps Chinese accountants to inspect the books kept in Chinese or not?

A Yes sir.

Q Could you operate your business if you were compelled to keep your books in any language other than the Chinese language?

A I believe that it would be impossible for me to do so.

Q Why not? What difference does it make whether you can read your own books or not?

A Because for a merchant the books of account are the eyes of his business, and without the eyes, he can not do business.

Q If Act 2972 were in force, do you know of any place where you could employ Filipino, American, or European bookkeepers who could keep your books?

MR. FELIX: Objected to as immaterial, as the witness will not know now whether he could find bookkeepers who could keep his books in other languages than Chinese or not. Furthermore, the witness is not qualified to testify on that point.

MR. GIBBS: I am asking him if he knows of any person whom he could employ to keep his books.

MR. FELIX: That is immaterial, and does not prove the shortage of bookkeepers.

A It would be very difficult for me to find this kind of person.

Q Why is it difficult?

A Because if the law is put into effect and many will present themselves without the necessary qualifications, and I, being ignorant, for example, of his qualifications, would accept him, and he could put most anything in the books.

MR. FELIX: Move to strike the last part of the witness' testimony, the last answer, because he can not testify as to what may occur in the future. This is merely a supposition of the witness, and can not be admitted as evidence, and furthermore the answer is a mere supposition of the witness that Act 2972 is not in force, which is an error.

Q. Why could you not judge of his qualifications?

A How can I judge a person's qualifications when I am not qualified myself, as I know nothing of bookkeeping.

MR. SY CIP: The translation is not correct. The proper translation is "I do not know how to pass on foreign accounting."

INTERPRETER: The question referred to foreign accounting, and the witness is accordingly giving to understand that he referred to foreign accounting.

Q Will you please clarify your answer?

A And also the question. I would like to have it made more clear.

Q Do you mean to say that you don't understand books of account kept in Chinese?

A No sir. Why shouldn't I know Chinese accounting.

Q Do you understand bookkeeping in Chinese?

A Yes sir.

Q What did you mean by your previous answer, when you said you were not qualified to pass on the qualifications of bookkeepers.

A I referred in that answer to foreign accounting, because in the former questions you referred to foreign accounting.

CROSS EXAMINATION BY

MR. FELIX:

Q Showing you this piece of paper, please write thereon, in Chinese, the following: "Act 2972 is now in force." And then sign your name.

A Do you mean to ask me if this Act 2972 is now in force?

Q I want you to write that phrase.

MR. GIBBS: The question is not whether it is in force or not. He wants you to write that only.

INTERPRETER: Yes, but the witness has asked me if that is the question.

MR. GIBBS: He wants you to write the words "Act 2972 is in force". The question is not whether it is a fact, but can he write that phrase.

A (Witness complies).

Q Now read it.

A (Reading) "This Act 2972 is now in force"

Q Put your name there.

A (Witness complies).

MR. FELIX: I will mark this sheet No. 1.

Q Mr. Yu Cong Eng, no functionary of the Government of the Philippine Islands or of the City of Manila has prohibited you from keeping books in Chinese, have they?

MR. GIBBS: Objected to as immaterial and irrelevant. Objected to furthermore on the ground that the fiscal is attempting to amend the law.

A I refer you to the fact that in the month of February, certain agents of the Bureau of Internal Revenue came to get my books.

Q That was the only time when, according to you, you were impeded from keeping books in Chinese?

MR. GIBBS: Objected to as immaterial, because it now appears in autos that he was prosecuted for having kept his books in Chinese.

MR. FELIX: The objection is based on an erroneous premise, because he was not prosecuted for having kept his books in Chinese, but for not having kept his books in English, Spanish, or local dialect.

A I suppose that the mere fact of their having taken my books meant to indicate that I must keep my books in a foreign language.

Q In case 25551 of the Court of First Instance of Manila, in which you were prosecuted for an infraction of Act 2972, you furnished bond, did you not, of two thousand pesos for your provisional liberty?

MR. GIBBS: Objected to as improper cross examination and not the best evidence.

A Yes sir.

Q And by virtue of that bond of two thousand pesos, you were never arrested in that case?

MR. GIBBS: Objected to as improper cross examination and not the best evidence.

A It appears so.

Q And the complaint was not read to you in that case, No. 25551; I mean officially, by the court?

MR. GIBBS: Objected to on the same grounds, and because the Supreme Court has already taken jurisdiction of the case for the purpose of disposing of the same.

A I was never cited to appear. Had I been ordered to appear I would have appeard.

Q You were never advised by any functionary of the City of Manila or of the Insular Government that you should not keep your books in Chinese only, is that not so?

MR. GIBBS: Objected to as completely immaterial and improper cross examination. I ask that the fiscal state his reasons, in relation to this question if he pretends that because the officials of the government have not insisted that he should not keep his books in Chinese characters, that by this the law is amended?

MR. FELIX: This representation will make known to the Supreme Court, at the proper time, the motives which have actuated it in addressing this question to the witness.

MR. LA'O: We must know it now.

MR. FELIX: I refuse to state it in advance.

A He took my Chinese books; afterwards a complaint was filed against me. In view of the fact that my books were taken from me, and the complaint was filed and they wanted to arrest me, I didn't know what to do, if they referred to the books, or to what they referred, because I had not committed any other crime.

Q Answer my question. No functionary of the city of Manila or of the Insular government ever told you that you should not keep your books in Chinese only?

MR. PALMA: I wish to enter the same objection as before.

MR. GIBBS: Objected to as ambiguous, and containing a double negative, and because Act 2972 is the law in question, and it makes no difference if the officials prohibited the books kept in two languages or not. The law itself prohibits that they shall be kept in Chinese, and the witness has been complained against in the courts for having kept his books in Chinese. It is improper cross examination and immaterial.

MR. FELIX: In deference to my colleagues and for the understanding of the witness, I will reform my question.

Q Is it not a fact that no functionary of the city of Manila or of the government of the Philippine Islands has prohibited you from keeping your account books in Chinese, if in addition you kept books of account in English, Spanish, or any local dialect?

MR. GIBBS: Objected to on the same grounds.

A I don't know.

IT WAS AGREED between the parties that Mr. Sy Cip might translate this question to the witness.

Q (Question repeated through Mr. Sy Cip).

A A business on a small scale can not have two sets of books.

Q Answer my question. Have they prohibited you or have they not prohibited you? Answer my question.

MR. GIBBS: Objected to on the same grounds.

A I suppose that they have prohibited me.

Q You don't know it for certain?

A I suppose so.

Q You are married to a Filipina, are you not?

MR. GIBBS: Objected to as completely immaterial and improper cross examination.

A No sir. I am looking for one, but I haven't found one yet.

Q How many Filipino employees have you?

A In the store, one. Employees in the bodega, I don't know at this moment how many there are.

Q. More or less?

A The number is not fixed. Sometimes there are five, sometimes three.

Q And in your office, how many are there?

A One.

Q You don't keep your books in Chinese personality, do you?

A As manager I do not have time to keep the books, too. Sometimes I supervise them.

Q You have never studied bookkeeping, have you, in Chinese?

A We belong to the older generation. We studied it, but we do not know the modern methods.

Q Answer my question. You have not studied Chinese bookkeeping, have you?

A I would say that in Chinese instruction, one who has learned writing, has learned also the method of keep-

ing books, without having studied bookeeping especially.

Q Do you mean to say that by the simple fact of being able to write Chinese characters, he also knows Chinese bookkeeping?

MR. GIBBS: Objected to as based upon a false premise. I wish also to have it appear that according to Mr. Sy Cip the witness has said that any person who has had instruction in Chinese, and learned to read and write, can easily learn to keep books in Chinese.

MR. FELIX: Objected to, as we have an official interpreter here, whose interpretations should rule.

A Yes sir.

Q You testified before that when your employees sell something, they prepared duplicate invoices, one to the purchaser and the other is kept by the one who makes the sale, is that not so?

A Yes sir.

Q And these invoices which were given to the purchaser were written in English or Spanish, weren't they?

A In Spanish. These words which were written in Spanish were certain words which are commonly used in lumber yards. They are well known, current words. All the employees of the lumber yard, all they know is the names of the different woods. They learn the numbers.

Q And a copy of this invoice which your clerk delivers to the purchaser, is delivered to the bookkeeper to take the necessary data to make the entries in your books, isn't that so?

A The bookkeeper takes only the following data: The number of the delivery order or invoice, and the to-

tal amount which appears in the invoice and that's all.

Q Testifying here before, you said that your bookkeeper could not keep your books of account in any other language but Chinese. How can you say that?

A Because he has not learned.

Q How do you know?

A Because a bookkeeper who has been living with me for eight or ten years, why shouldn't I know?

Q You have also testified before that the employees of the Internal Revenue Bureau frequently examined your books. These employees who examined your books were Filipinos, weren't they?

A Sometimes Filipinos accompanied by Chinese. Other times Filipinos only.

Q The greater part of the time Filipinos only?

A I cannot remember exactly.

Q What books are necessary to keep books in Chinese?

A That depends on the business. If it is a business on a large scale, more books are required. If the business is small, such as a *sari sari tienda*, one and one more is sufficient.

Q I am referring to a business such as yours.

A I need many books, and I use many books.

Q What are they?

A A sales book.

Q What else?

A A day-book, a blotter, a day-book taken from this blotter, a ledger in which the accounts of the employees and the accounts of the customers in the locality are kept.

Q Is that all?

A This last book to which I refer is only had with the Chinese only. I have another ledger which covers

business with people of other nationality. Another book showing deliveries of lumber, and another book showing the materials to be used on a house, on a contract. Another ledger of contracts of construction, and another book which shows repairs to buildings, and another book in which appears the amount paid daily to the internal revenue, tax sales, and another book in which appears the balances which appear in the books which I have referred to, monthly, so that at the end of the year we can take from that the data to prepare the income tax statement.

Q Are there any more books?

A There are other books, which are not important.

Q This book which you refer to as the sales-tax book, you keep that in Spanish, don't you?

A In Chinese.

Q Do you know the relation of one book of account to another?

MR. GIBBS: Objected to as ambiguous.

A There is a relation between them.

Q But the question is, do you know what the relation is?

A With these books a set of books is formed.

Q But the question is, if you know the relation of one book to another. Do you know the relation between a day-book and a ledger?

A Items must come from the day-book to be put in the ledger.

Q Answer the question. What relation does it have?

MR. GIBBS: Objected to as completely vague and unintelligible. The fiscal himself cannot answer it.

A These books must go one behind the other. These books must be kept together, as otherwise it will be impossible.

Q What is the purpose of the ledger?

A Supposing that this month you have taken four shipments of goods. You come to me and ask "How much do I owe?", and I, opening the ledger, I immediately find the amount, that you owe me. Without this, I would have to look up one by one in the other books.

Q Since the 21st of February, 1921, what efforts have you made, if any, to keep your books in English, Spanish, or any local dialect?

MR. GIBBS: Objected to as immaterial and as improper cross-examination.

A I have heard it said that I should keep books in a foreign language, but I did not receive official notice.

Q Answer my question. I am not asking if you received notice. I am asking you what efforts you have made, if any, to keep your books in English, Spanish, or any other language.

MR. GIBBS: I am willing to admit that he has not made any effort.

MR. FELIX: With that admission, I will not insist on the question.

Q How do you present your statement at the end of each quarter, on which the sales tax is charged? In English, Spanish, or Chinese?

A I don't remember if it was Spanish or English. I cannot answer that question categorically, in Spanish or English, because sometimes, when friends of mine come in, my friends make it out for me. Sometimes the Filipino in my office makes it out.

The hearing at this point was continued until 8:30 a. m., July 3, 1923.

SESSION OF JULY 3, 1923.

The case came on for a continuation of the hearing on this 3rd day of July, 1923, and the following proceeding were had, to wit:

The same appearances were noted as at the previous hearing.

The witness YU CONG ENG continued his testimony after having been cautioned that he was still under oath.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q How many different kinds of lumber do you sell in your establishment, approximately?

A Of the ordinary woods that are sold, there are more than ten kinds.

Q By the term "ten kinds" do you mean approximately ten kinds, or might there be a hundred kinds?

A Of the woods that are ordinarily sold, there are more than ten different kinds, but they are subdivided by themselves, by dimensions, under distinctive names, so that the subdivisions are numberless.

Q How many kinds of woods have to be entered in the memoranda that the Chinese employees of your establishment have to make?

A The maximum is ten, which is daily used. That is to say, not counting dimensions.

Q What is the maximum number of separate and distinct words which these Chinese employees have to write in order to comply with the duties of sellers of lumber in your establishment?

MR. FELIX: Objected to as the witness is not qualified to testify as to that.

A The names of the woods are used, but with the difference that this depends on the dimensions of the woods which are called for.

Q Is this memorandum a printed form or is everything written?

MR. FELIX: I would like to ask a previous question. Are you asking regarding the invoices, or *facturas?*

MR. GIBBS: I object to a previous question.

A Only the name of the establishment, the address, and the office is printed, but the names of the articles are written, because they are written easily, for example the word "Ipil" is written "Ipil".

Q But what I want to know is whether these lumber salesmen in your establishment are experts in Spanish, English, or local dialects, or if they only know a few words.

MR. FELIX: Objected to as the witness is incompetent to answer, and furthermore that is not the best evidence, the sellers themselves being the best evidence.

A No sir, the only thing they know is the names of the different woods.

Q How many names of woods do they know?

MR. FELIX: The same objection.

A What they ordinarily know and write are the following: Molave, Ipil, Tanguile, Apitong, Lauan, Narra. These five or six names mentioned by me are the ones that are sold daily, and also Guijo and Yacal. My employees, when they come to my establishment in the beginning, the only things they learn are the names given by me, Ipil, Yacal, and so forth. If they transfer to another establishment, say of dry goods, they have

to learn other words, because outside of these they cannot write other things. They have to learn all over again.

Q Referring to this book which I hand you, please state what it is.

A A book in which the Internal Revenue tax appears, in which every day the entries are made.

MR. FELIX: I wish to have it appear of record that the book to which the witness refers does not carry the certificate of the Justice of the Peace of Manila.

Q What are the contents of that book? What is recorded in that books?

MR. FELIX: Objected to, as if the book is not admissible in evidence, the testimony of the witness regarding it is inadmissible.

MR. GIBBS: We desire to have it appear that this book is offered as a basis for another question.

A In this book entries are made to show the daily sales for cash, and the amout of lumber which is sold on credit.

Q In other words, this is what is called the sales book?

A There is another sales book.

Q What is the difference between this book and the sales book?

A The difference between this and the sales book is that in the sales book issues of lumber are shown.

MR. SY CIP: He said it this way. He said the sales book records the sales of lumber, but this in addition to the sales it also contains materials taken for the construction of houses.

INTERPRETER: I have not finished the translation yet.

A (Continued) In the sales book is entered the sales of

lumber, whereas in this book is entered the sales for cash and for credit, and also the materials issued under contracts, and the money collected on contracts.

Q But we don't know what this book is.

A In one word, all the transactions on which I must pay tax are entered in this book.

Q How do you make your report to the Bureau of Internal Revenue?

A At the expiration of the quarterly period, the sum total of all the three months is arrived at. When this sum is arrived at, we fill out a printed form, only putting in this printed form the figures, showing the amount of money. There is also put in there the amount which should be paid as tax. This is a printed form, prepared already. We only fill it out.

Q Prepared by whom?

A The office of the Bureau of Internal Revenue.

Q This book in which you obtain the sum total to fill out the Internal Revenue form, in what language is it kept?

A Chinese.

IT WAS MADE TO APPEAR OF RECORD that the respondent has been asked to bring here one of the trimonthly printed forms presented by Yu Cong Eng, and the Collector, Mr. Posadas, stated that he will present it, with the consent of Mr. Yu Cong Eng.

RE-CROSS EXAMINATION BY

MR. FELIX:

Q You have been talking of memoranda which are prepared by your employees. These memoranda to which you refer are invoices covering the lumber which you sell, is that not a fact?

A Yes sir.

Q You have never examined your employees to determine as to their knowledge of Spanish, English, or any local dialect, have you?

A There was no necessity to examine them, because those that come there as employees come without knowing anything, and there they learn, by learning the names of the different kinds of lumber.

Q I am not asking whether there is a necessity. I am asking you if you did or did not examine them.

A No, I did not.

Q The greater part of the construction contracts which you make are with Filipinos and Americans and foreigners of a different nationality than yours, is that not a fact?

A Yes sir.

Q And these contracts are written sometimes in English, sometimes in Spanish, or in the dialect or language spoken by the particular person, is that not a fact?

A The contracts are made, in the greater number of cases, in Spanish. I wish to have it appear that I do not make these contracts, I do not prepare them. I have an intimate friend, a Filipino, who attends to nearly all of the formalities of these contracts, and who prepares these contracts.

Q And he is an employee of yours?

A No sir, he is a friend of mine, and when he has his contracts, he sends them to me to be carried out, and after having had these transactions over quite a period of time, we have become quite friendly.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q To what contracts do you refer?

A Construction contracts.

Q Whose contracts? Of your establishment, or the establishment of Dee C. Chuan?

MR. FELIX: The witness has not mentioned Dee C. Chuan.

A If you have a house, and you have me buildit, the contract is between us.

Q Now are you talking about contracts that your establishment makes or that some other lumber yard makes. (To interpreter): Tell the witness to try to make his answers concrete and clear. We may save hours of time. And you make your interpretation clear. Don't have him give some foolish answer that has no relation to my question. We are just killing time here.

A He is an architect, and the owners of houses who wish to have their houses built, give me the plans so I can make a calculation of costs. When we have arrived at an agreement, and we want to make a contract, this friend makes the contract.

Q (Question repeated, translated by Mr. Sy Cyp, without objection from the fiscal.)

A They are my contracts.

Q This friend who prepares these contracts for you, is he an employee of yours, or only a friend?

A He is not my employee.

Q Has he any interest in your business?

A He has no interest in my business. He is an architect. He receives compensation from the owners of houses.

Q When you said in answer to the fiscal that the greater part of your business is done with persons other than Chinese, to what branch of your business do you refer?

A Since I have had this lumber yard business, I have had more transactions with Filipinos than with others.

Q Are you referring to your business of construction of houses, or to your business of selling lumber?

A As much to the construction of houses as to the sale of lumber.

Witness excused.

SY SENG TONG, a witness for the petitioner, was duly sworn, and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

MR. FELIX: I wish to have it appear of record that this man, Sy Seng Tong, was present yesterday afternoon, and I believe this morning also, when the previous witness, Yu Cong Eng, was testifying, and for this reason, I having asked for the exclusion of witnesses, I object to that part of his testimony which may have to do with the questions addressed to Yu Cong Eng.

Q State your name and other personal circumstances.

A Sy Seng Tong, 30, married, merchant, 1024 Calle Comercio.

Q What kind of mercantile business are you engaged in?

A Groceries.

Q What is your nationality?

A Chinese.

Q Can you read or write any other language except Chinese?

A A little.

Q What is the extent of your ability to read or write other languages except Chinese?

A A very little.

Q We will have to find out what a little is, if it takes a week.

A I can read a little and I can write a little.

Q In what language?

A Spanish.

Q In what language are the books of account of your establishment kept?

A Chinese.

Q Is your knowledge of any language except Chinese sufficient to enable you to keep books?

A No sir.

Q Is your knowledge of Spanish or any other language except Chinese sufficient to enable you to check up and understand books of account kept in any other language except Chinese?

A No sir, I cannot.

Q About what is the value of the stock of goods which you generally carry?

A Do you refer to the capital stock?

Q No, the value of your stock in trade.

A It is not fixed; sometimes sixty or seventy thousand; at times from seventy to eighty thousand.

Q How many employees do you keep in your establishment?

A More than ten. Eleven or twelve.

Q What is their nationality?

A All are Chinese.

Q Do your Chinese employees read and write any other language than Chinese?

MR. FELIX: Objected to as the witness is not qualified to answer as to that.

A One or two know a little.

Q Know a little of what?

A Spanish.

Q What is the extent of this "little"?

MR. FELIX: Objected to on the same grounds. The witness is not qualified to answer as to that.

A They can read a few names of articles.

Q How many articles or goods, approximately, do you carry in your establishment?

A More than five hundred different kinds of articles.

Q Is your business retail or wholesale?

A Both wholesale and retail.

Q Of what nationality are your customers?

A Chinese and Filipinos.

Q What kind of bookkeeper have you? Of what nationality is your bookkeeper?

A Chinese.

Q How many books of account do you keep in your establishment, and in what language are they kept?

A The books which are ordinarily used in business, day book, ledger, "libro de entregas", blotter.

Q In what language are they kept?

A In Chinese.

Q Are any of your employees able to keep books in any other language than Chinese?

MR. FELIX: Objected to as the witnes is not competent to answer as to that.

A No.

Q How long have your Chinese employees been with you?

A Some three or four years, others one or two years.

Q How long have you been operating this business of yours?

A This business was operated by my father with his partners; it has run for more than thirty years.

Q Would you be able to continue operating your business establishment if Act 2972 were enforced against you?

A No, it would not be possible.

Q Why would it be impossible for you to continue operating your business?

A Because if the books of account were kept in a foreign language, I would have to change practically all of the employees, and neither would we be able to know if the books were being kept in proper form.

Q If the books were kept in Spanish or any other language other than Chinese, would you be able to revise them and check them up and understand the status of your own business?

A No sir.

Q You stated that in the event of employing a bookkeeper other than Chinese that you would have to change all of your present employees. Why would you have to change them?

A Because if this law goes into effect, the first thing that I wouldn't know what to say would be to say to the bookkeeper how to make the necessary entries; neither would my present employees know how to write other than in the Chinese language.

Q If you were compelled to employ a bookkeeper other than a Chinese bookkeeper, do you know where a competent bookkeeper in any other language could be obtained in the Philippine Islands?

MR. FELIX: Objected to as immaterial.

A I do not know any; I do not know.

Q If a bookkeeper in any other language that Chinese should present himself to you for empolyment, would you be able to ascertain whether he was a competent bookkeeper or not?

A No sir.

Q Can you read and write well the Chinese language?

A Yes sir.

Q Can you check up and revise books of account kept in the Chinese language?

A Yes sir, I know Chinese accounting.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: I wish to have the objection entered in the record to all of the testimony of this witness, for the reason that it is immaterial, in that it does not appear that this witness is a party to this case.

Q You were born in the Philippine Islands?

A No sir; in China.

Q How long have you been in the Philippine Islands?

A About sixteen years.

Q And all of this time you have been in the City of Manila, is that not a fact?

A Yes sir.

Q In addition to Spanish, which you say you read and speak, you also read and write English, is that not a fact?

A No sir, I have not learned English.

Q Are you married in the Philippines to a Filipina?

MR. GIBBS: Objected to as immaterial.

A No sir.

Q You speak Tagalog also?

A Yes sir.

Q Who keeps the books of account of your business located at 1024 Calle Comercio of this city?

A A chinese clerk.

Q You are not a bookkeeper, are you?

A No sir.

Q How is the tri-monthly statement prepared which you submit to the Bureau of Internal Revenue?

A We should know what is sold in one month.

Q Is it kept in Spanish?

A Yes sir.

Q The larger part of your customers are Filipinos, aren't they?

A Yes sir.

Q Filipinos who do not speak Chinese?

A They do not know Chinese.

Q And you and your clerks communicate with them in Tagalog or in Spanish?

A Usually we communicate with them in Tagalog.

Q You never examined any of your employees to determine their knowledge of Spanish, English, or any local dialect?

A No sir.

Q You have testified that you could not keep your books of account in any other language than Chinese. Now, my question is since the 21st of February, 1921, have you made any effort to comply with the provisions of Act 2972?

MR. GIBBS: Objected to as immaterial and incompetent, and asking for the conclusion of the witness and not a statement of facts.

A According to my humble opinion, this is a democratic country, and that liberty should be permitted.

Q Answer my question. Since the 21st of February, 1921,

have you made any effort to comply with the provisions of Act 2972?

A We are going on as before.

Q In your office you have a sales book for Internal Revenue?

A Yes sir.

Q And in this Internal Revenue book you make the entries in Spanish, don't you?

A No sir, in Chinese, but we have another book in which we put only the amounts in figures.

Q Do you mean to say that you have an Internal Revenue book written in American or English characters, and another in Chinese characters?

A In the other book is written only the total of sales on credit, sales for cash and the totals.

Q But answer my question, if you keep an Internal Revenue sales book in Spanish.

A Only t[illegible] figures.

Q Yes or no. Do you mean to say that you enumerate in the book of Internal Revenue the numbers in Arabic, the figures?

A Yes sir.

Q And the other you keep in Chinese characters?

A Yes sir.

Q Who makes the entries in the Internal Revenue book in characters not Chinnese?

A The bookkeeper. The clerk knows how to write the figures.

Q Is he a Chinese?

A Yes sir.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q Can you write in Tagalog characters?

A I can read a little.

Q Could you write, for example, a business letter in Tagalog?

A I cannot.

Q As I understand you, the only book you kept in Spanish is a daily report of your sales, of your total sales, is that true?

A There only appears the three entries, the total of sales for cash, the total of sales for credit, and the total of these two.

Q In other words, the daily reports contain two phrases in Spanish "Al fiado" and "Al contado"?

A No sir, these words are printed already in these Internal Revenue books.

Q So that the only thing that has to be written in any language other than your own, are the figures?

A The only items that go in are the figures, because even the date is printed.

Q And these figures consist of the total of the sales on credit, and the total of the sales for cash, and the sum total of the two?

A Yes sir.

Q And these total sales on credit and for cash you get from your sales book kept in Chinese?

A Yes sir, they are taken from the Chinese book.

RE-CROSS EXAMINATION BY

MR. FELIX:

Q When you sell merchandise in your establishment to

your customers, as well at wholesale as at retail, you prepare invoices, don't you?

A Yes sir.

Q And these invoices are prepared in Spanish, aren't they?

A Only for the Filipino customers. For the Chinese the invoices are in Chinese.

Q An for foreign customers, that are not Chinese?

A In Spanish.

Witness excused.

CO LIAM, 56 years of age, married, merchant, 364 Calle Santo Cristo, a witness for the petitioners, was duly sworn and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you been engaged as a merchant in the Philippine Islands?

A Since 1909.

Q And before 1909 what was your occupation?

A Manager. Employee and manager.

Q Of whom?

A Go Chuico.

Q How many years have you been in the Philippines?

A For so long that I don't remember.

Q And during all this time since you can remember, to what kind of business have you devoted yourself, either as an employee or in your own business?

A Hardware and notions. (*Quinquereria y chucheria*).

Q Are you familiar with any other business, or have you any other means of livelihood other than the mercantile business?

A No sir.

Q What is the approximate value of your stock of goods?

A Today?

Q Yes.

A Five or six thousand pesos.

Q What are your profits, approximately, each year?

A Due to the present bad times, some years we gain very little and the greater part of the time we lose.

Q Before the epoch of bad times, what was the approximate profit derived from your business each year?

A A very little.

Q The approximate profits?

A A small amount. I don't remember. One or two thousand pesos or some hundreds of pesos.

Q How many employees do you keep?

A At the present time I have two employees.

Q What nationality?

A Chinese.

Q In what language do you keep your books?

A Chinese.

Q Can you read or understand books of account kept in Chinese?

A Yer sir.

Q Have you a bookkeeper at the present time?

A A Chinese.

Q Are you or any of your employees capable of keeping books in any other language than Chinese?

MR. FELIX: Object to the second part of the question, referring to his employees, as he is not competent to answer that question.

A We do not know.

Q Could you continue operating your business if you were compelled to keep your books in any other language other than Chinese?

A I cannot.

Q Why not?

A I cannot continue the business, because I do not speak any other language, and in the supposition that I had a foreign bookkeeper, I could not tell him what to enter in my books.

Q Have you been paying your sales tax since the time that the sales tax act was enacted?

A Yes sir.

Q Have you ever defrauded the Government of any amount due it for taxes?

A Never, as God is above me I have kept them honestly.

Q Are the profits of your business sufficient to enable you to keep the books in any other language, other than Chinese?

A The business couldn't stand it.

CROSS EXAMINATION BY

MR. FELIX:

Q Notwithstanding you have lost much in the greater part of your business transactions, you have continued in your business?

MR. GIBBS: Objected to as based on a false premise. The witness didn't state that.

MR. FELIX: The witness has stated that.

MR. GIBBS: State to the witness that the question is not correct, as it is based on a false premise.

MR. FELIX: I object to having such a statement made to the witness. The record will show. The reporter will read his testimony.

(The reporter then read the answer of the witness appearing on page 34 "Due to the present bad times, some years we gain very little and the greater part of the time we lose.)

A In the hope that times will improve and we can gain enough to cover the loss.

Q You have never studied bookkeeping?

A In China I did not learn bookkeeping. One who learns to write Chinese learns at the same time bookkeeping.

MR. SY CIP: He didn't say that.

Q (Question repeated).

A No sir, but in China, when one learns and knows Chinese, he learns at the same time.

MR. SY CIP: He didn't say that he learns at the same time. He says that a person who knows Chinese very well will know bookkeeping.

Q Do you mean to say that by the mere knowing how to write Chinese, that one knows at the same time the rules and theory of bookkeeping?

A When one has studied sufficiently, he knows also bookkeeping.

Q In one word, you say that you know how to keep books of account as you deem best, without any specific rules, or fixed rules?

A Those that know how to keep books know the rules of bookkeeping.

Q You don't know the rules of bookkeeping, then?

A I know them a little, but I have a bookkeeper.

Q You speak Tagalog, don't you?

A A very little, just the commoner words.

Q The greater part of your customers are Filipinos, isn't that so?

A The greater part are Chinese.

Q Is your business wholesale or retail?

A Sometimes it is at retail, but if a customer comes and wants to buy at wholesale, I let him buy it.

Q And do you mean to say that notwithstanding that your business is for the greater part at retail, your customers are mostly Chinese?

A These sales at retail, ten centavos, fifty centavos, and a peso, my customers are Chinese and Filipinos.

Q Who deals with the customers, you or your employees?

A I know the words "Quiere Vd." (Do you want it) "No quiere" (Do not want), "Es precio fijo?" (Is this a fixed price?), "Aumento un poco" (Increase it a little), "Cuanto?" (How much?) "Este efecto es de buena calidad?" (Is this article of good quality?). These words I know, and my employees know them.

Q So that you and your employees can deal with your Filipino customers in making sales?

A Why not. With these words, knowing the names of the articles and the prices, we can sell them.

Q Answer my question. You and your employees can make yourselves understood with your Filipino customers who do not understand Chinese?

A These words mentioned by me I know, "Primero" "Quiere", or "No quiere".

Q Answer whether you make yourself understood with them.

A We can, only on sales at retail, the names of the articles and so forth.

Q You say you keep books of account? What books?

A Chinese.

Q What books?

A The books which are used.

Q What are they?

A A blotter, a "libro de entregas", a book of retail sales, another book in which appears the money taken by the employees, another book in which the capital is shown, and another book the data for which is taken from the daybook. Another book of "salida".

Q In your business you prepare a trimonthly statement to be presented to the office of the Bureau of Internal Revenue, don't you?

A Yes sir.

Q And this statement is prepared by you in Spanish, isn't it?

A By the assistance of another person, who knows how.

Q An employee of your establishment?

A No sir.

Q Have you not been prosecuted or accused of an infraction of Act 2972?

A No sir.

Q And no functionary of the City of Manila or of the Government of the Philippine Islands has impeded you from keeping your books of account in Chinese, have they?

MR. GIBBS: Objected to. Act 2972 provides expressly that it is illegal to keep books of account in any other language than Spanish, English, or other local dialect.

A No sir.

Q Have you ever been fined for infraction of the Internal Revenue law for not having paid all that you owed to the Internal Revenue?

A Never.

Q Have you ever examined your employees to determine their knowledge of Spanish, English, or any local dialect?

A They do not know.

Q Answer the question, if you have ever examined them or not. Have you?

A If they don't know, how can I examine them, if they haven't learned it?

Q In other words, you have not examined them.

A I asked them, and they don't know.

MR. SY CIP: They answered "What is the use of asking them?".

Q (Question repeated.)

A I knew that they do not know.

Q Since the 21st of February, 1921, up to date, have you made any effort to put yourself in condition to comply with the provisions of Act 2972, if you are not in condition to do so at the present time?

A It was impossible for me to do so.

Q Why not? Why didn't you make any effort to comply with the provisions of Act 2972?

A I don't know. I cannot.

Q Do you read Chinese and write Chinese?

A A little.

Q Showing you this paper marked "Exhibit "1", please read what is stated there.

A (Reading) "This law No. 2972 is in force, Yu Cong Eng."

Witness excused.

At 11:35 a. m., the hearing of this case was suspended until July 5, 1923, at 8:30 a. m.

SESSION OF JULY 5, 1923.

The above entitled cause came on for a continuation of the hearing on this 5th day of July, 1923, at 8:30 a. m.

The same appearances were noted as at the previous hearings.

JUAN POSADAS, JR., 38 years of age, married, Acting and Deputy Collector of Internal Revenue, was sworn as a witness for the petitioners, and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q You have voluntarily stated, I don't know if half in joke or not, that you are half Chinese, is that a fact?

A No sir.

Q Have you no Chinese blood?

A I don't know.

Q I call your attention to a copy of a letter dated June 27, 1923, marked "Exhibit A", and ask you to state if you received the original of which that is a copy.

A Yes sir, it was given to me by Mr. Trinidad.

Q You are taking Mr. Trinidad's place so far as this case is concerned?

A My office, the Bureau of Internal Revenue.

IT IS STIPULATED that the copy marked "Exhibit A" may be introduced in evidence in lieu of its original.

MR. FELIX: Although I claim that that letter is entirely immaterial in this case.

MR. GIBBS: (Continuing dictation of stipulation) Subject to the objection of the respondents that the letter is immaterial.

Q I call your attention to this letter dated June 29, 1923, purporting to be signed by you and addressed to Mr. A. D. Gibbs, marked "Exhibit B" for identification, and ask you to state if that is an answer to "Exhibit A".

A It is.

Q In reply to the information requested in the 4th item of the letter of June 27th, 1923, "Exhibit A", you replied in your answer of June 29th, "Exhibit B", "No statistics kept". Is it not a fact that the information

requested in that 4th item is in your possession as Collector of Internal Revenue?

A It is true that there are no statistics kept. We do not keep statistics by nationality.

Q But you have the information requested, in your office, have you not?

A The exact data, I don't think we have.

Q But you have the data from which the information requested in paragraph 4 may be made up?

A If you refer to the receipts for taxes paid by the Chinese under internal revenue, yes, but it is difficult to distinguish to what nationality they pertain, in view of the fact that many Chinese do business under Christian names, so it cannot be distinguished if they are Filipinos, Spanish, or Chinese.

Q But isn't it a fact, Mr. Posadas, that very few of the Chinese do business under Christian names?

A It is very possible, but I have never had the opportunity to check that up.

Q And the Chinese name is very easily distinguished from any other name, isn't that a fact?

A Yes sir.

Q So that outside of the few instances in which the Chinese operate under Christian names, you have the data asked for in the letter, Exhibit "A"?

MR. FELIX: Objected to as it appears that this is set up in the complaint, and answered specifically in the answer, so that there is no need of evidence on the subject, that

A From the stubs of all the receipts, it is possible that the information you desire can be obtained.

Q But you don't need to classify this as a possibility. You know of your own knowledge that this data exists?

A Yes sir, we have the receipts covering the payments received by the office.

Q And from these receipts, and from the reports of sales tax, you can furnish the information requested in paragraph 4 of Exhibit "A"?

A I could furnish it if I had sufficient personnel to classify these receipts, but I would require a considerable number of employees.

Q And is it not a fact that in these few cases in which the Chinese operate under Christian names, that they employ, in continuation, the Chinese name?

A Not always.

Q How do you know that?

A Because I know of some cases where they carry the Christian names where they don't use the Chinese name.

Q Can you give us an example?

A At this moment I cannot cite a concrete case, but possibly by consulting the records of our office I can answer the question.

Q You also have the data from which an answer could be prepared to furnish the information requested in paragraph 5 of "Exhibit A", isn't that a fact?

A Our office does not keep statistics which indicates the percentage or proportion paid by the different nationalities.

Q Well, but you have the data from which could be ascertained the total sales made by the Chinese and the total sales made by other nationalities, isn't that a fact?

A It is difficult to determine that, in view of the fact that in the tax receipts the nationality of each tax payer does not appear.

Q But you can, except in the few cases where the Chinese do not use their Chinese names, distinguish if they are Chinese or not?

MR. FELIX: Objected to, as the witness has not stated that he has personally examined the receipts given to merchants, Chinese or not Chinese.

A If it is a question of checking the names of those taxpayers who have a Chinese name?

Q But at this moment you cannot remember a single case in which a Chinese has employed a Christian name?

A Yes, at this moment I can remember one in Cebu, Joaquin Castro, who is a Chinese operating under a Christian name.

Q And that is the only one you can remember?

A At this moment.

Q And you know of the fact that this is a...

A Yes, and I must call attention to the fact that many Chinese operate under a corporation form, and give any name to the corporation.

Q Therefore, you have all the data regarding all the Chinese establishments that bear Chinese names?

A If you mean to recapitulate the firms which have Chinese names, we can do that, but I should advise you that the office has not sufficient personnel to keep recapitulate that.

Q Nevertheless you have been able to furnish considerable data to the respondents in this case, is that not a fact?

A I have furnished to the fiscal certain data which I gathered a long time before this case was brought before this court.

Q What data have you furnished to the fiscal in regard to this case?

MR. FELIX: Objected to the question as the information requested is of a confidential character. Nevertheless, this data will be presented in due course.

MR. GIBBS: We want it now.

A I don't remember.

MR. GIBBS: I ask that the fiscal show me the data which the respondents furnished him from the Bureau of Internal Revenue.

MR. FELIX: I refuse, as the petitioners have no right to call for any document in the possession of the respondents. Nevertheless, I am willing to furnish these documents to the petitioners, provided they agree to offer them in evidence.

MR. GIBBS: I wish it to appear of record that I am not going to bind myself to present as evidence any data prepared (*confeccionado*) by the respondents without examining same.

MR. FELIX: Understanding that the word "confeccionado" means "prepared" and not "fabricated."

MR. GIBBS: You can interpret it as you like.

Q Referring to the data asked for in the sixth paragraph of the letter "Exhibit A", your answer in regard to that would be the same as that which you have given in regard to paragraph 5?

A Yes sir, but it would be easier on account of the fact that the income tax statements show the nationality of each taxpayer.

Q And you have all the data on this, so that you could answer?

A As far as they comply with the Income Tax requirements of the office.

Q Nevertheless, you have answered stating that you have no statistics.

A It is true, we do not keep statistics.

Q Referring to the last paragrah of Exhibit "A", with reference to a proposed amendment of Act 2972, has the Bureau of Internal Revenue a copy of that proposed amendment in its office?

MR. FELIX: Objected to as completely immaterial.

A I do not rememeber. I have not gone through the records of the office to find out whether or not we have a copy.

Q But you do know that an amendment to the law was proposed by the Secretary of Finance, providing for the registration by the Justice of the Peace and the stamping of books of account which should not be kept in English, Spanish, or some local dialect, do you not?

MR. FELIX: Objected to as the question has been answered in the letter, Exhibit "B", and on the further ground that it is completely immaterial.

A I believe that I do remember that such an amendment was proposed.

Q And that proposed amendment was submitted to the Bureau of Internal Revenue, was it not?

MR. FELIX: Objected to as already answered in the letter, "Exhibit B", and furthermore on the ground that it is completely immaterial.

A I cannot state exactly that the proposed amendment was submitted to the office, but if I remember rightly, I have seen a copy.

Q And that copy was sent to your office by the Secretary

of Finance, wasn't it, sent to the office of the Bureau of Internal Revenue?

A I don't know as to that, that the Secretary of Finance was the one that sent that copy.

Q But you do know that some official of the government, interested in the subject, sent a copy of the proposed amendment to your office?

MR. FELIX: Objected to as immaterial.

A I will think over how I happened to see that copy. I think I have answered that question in the previous questions directed to me, that I did not know exactly who sent the copy of the proposed amendment to the office. I do not remember.

Q How long have you been in the Bureau of Internal Revenue?

A I have been in the Bureau of Internal Revenue since 1920, I think it was April.

Q Will you produce the copy of the proposed amendment to that law for our examination?

MR. FELIX: Objected to on the ground that laws and copies of laws can be submitted to us by the person in charge of their custody, as the presentation of the copy of this proposed amendment of the law, which is asked for, would not be admissible, if presented by someone in the Bureau of Internal Revenue, as evidence in this case.

A Yes sir, I have no objection to furnishing you a copy, if I can obtain it from the House of Representatives or the Senate, where the amendment was presented.

Q But what I want is the copy received in your office. We could get it ourselves from the office of the Legislature.

A I can check up my records and see if I have it.

Q Do you know approximately how many years Mr. Trinidad has been in the office of the Collector of Internal Revenue?

A I believe that he was appointed as Deputy Collector of Internal Revenue in 1917 or 1918. I don't remember which of those dates.

Q Was he employed there before that?

A No sir, he was a provincial treasurer.

Q Are you disposed to prepare and furnish for the purposes of this trial the data asked for in paragraphs 4, 5, and 6 of the letter "Exhibit A"?

A At the present time I have not sufficient personnel to furnish this data, and unless they furnished me with special personnel I cannot do it, without delaying the ordinary routine of my ofice.

Q How long a time would it require without delaying the ordinary routine of the office?

A It covers a period of four years, and, naturally, its preparation will require a long time.

Q Please state approximately.

A That will depend upon the personnel that can be employed in this work. At the pesent moment the office is working with a very deficient personnel.

Q How many employees would be necessary to do this work, dedicating themselves exclusively to it?

A It will require the revision of forty eight thousand monthly accounts.

Q That is the basis, only, of your answer.

A And I believe that it will be necessary to employ a sufficient number of personnel that can do the work

within a determined time, which I cannot now calculate or state definitely.

Q Do you know, approximately, how the number of Chinese merchants, and the extent of their business in the year 1912 compares with that of the year 1922, for example?

MR. FELIX: Objected to as immaterial.

A I do not remember having made this comparative study of the number of Chinese merchants.

Q I call your attention to the table shown on page 7 of the bill of exceptions in R. G. No. 10951, entitled "K. S. Young et al. *vs.* James J. Rafferty et al.", and ask you to state if you can furnish the same information as to the year 1922 or 1921 as was furnished by your office during the trial of that case for the year 1912?

A I don't think that I can furnish the same data that appears here.

Q Don't you keep as accurate information and statistics now as you kept in your office in the year 1912?

A I can assure you that the statement which appears here did not come from information recapitulated in an ordinary statistic. They must have taken a special census in order to be able to present this data, and I believe that possibly the same data which is here shown can be obtained from the 1918 census.

Q But you know that census is not correct, don't you?

A I cannot judge that, because I have not examined it.

Q Will you do me the favor of reading what is stated there above this table, and state if this, according to the stipulation there, was not prepared by your office?

A Yes sir. I have answered this, that these statistics were made up from any actual statistics kept in the office, but that a special census must have been taken, because, as I have said, the tax receipts do not state the nationality of the taxpayer, and the receipts must be classified.

Q Do you mean to say that the data mentioned in this table did not actually exist in the Bureau of Internal Revenue?

A I cannot state if a copy of this table exists in the Bureau of Internal Revenue, but I do know that such a statistic was never kept there, and it must have been necessary to have taken a special census in order to obtain this data.

Q Nevertheless, this table was prepared, as appears in the bill of exceptions, in the above entitled case, within four months after the complaint was filed?

MR. FELIX: Objected to, as the witness is not competent to testify if the table appearing in this bill of exceptions was prepared or not by his office, and the time occupied in preparing it, in the event that it was prepared there.

A I cannot testify as to that, as this is the first time that I have seen this table.

MR. GIBBS: I offer in evidence Exhibits "A" and "B". I also offer in evidence copy of the bill of exceptions in Case R. G. 10951, entitled K. S. Young *vs.* James J. Rafferty et al., which I will mark as Exhibit "C".

MR. FELIX: As to Exhibits "A" and "B", I have no objection, although I believe them to be immaterial. As to Exhibit "C", we admit that this is the bill of

exceptions of case R. G. 10951, Young et al. *vs.* Rafferty, but we object to its admission as immaterial and impertinent in the case now on trial.

Q Mr. Posadas, will you, without an order of court to that effect, furnish the petitioners the names and addresses of all the Chinese merchants in the Philippine Islands, together with a statement of the amount of sales tax and the amount of income tax paid by each for the year 1922?

MR. FELIX: Object to the petition, because the law provides that this data is of confidential character, and cannot be furnished, in such a case.

MR. GIBBS: As representatives of the Chinese merchants, we waive the privilege to keep as a secret the data mentioned.

MR. FELIX: In this case the attorneys here of record only represent the petitioners, that is to say, Yu Cong Eng and Co Liam, and cannot waive this privilege on behalf of the other Chinese who form the Chinese community in the Philippines.

A No sir, I cannot furnish it.

Q You have the data in your office upon which to base such information, have you not?

A I believe I have answered the same question in previous answers to previous questions.

Q Will you, without an order of court, furnish the petitioners with the same information with reference to the year 1922 as was furnished by your office in the case of Young *vs.* Rafferty, for the year 1912, as shown on page 7 of the bill of exceptions in that case, Exhibit "C"?

A No sir, because we have not all the data that appears there.

Q Do you know of any other means by which the petitioners may obtain the information referred to, except through your office, or by calling as witnesses all the Chinese merchants in the Islands?

A If I might suggest it, I believe that the Chinese Chamber of Commerce could more easily furnish the information which you desire.

Q But that would necessitate first obtaining all the information which you now have in your office, as a basis for the preparation of that data, would it not?

A Not necessarily.

Q That is an answer which requires an explanation so that it may be of any benefit. Do you know of any means by which the information furnished in the table on page 7 of Exhibit "C" could be obtained by the Chinese Chamber of Commerce except through your office, or through a canvass of the entire Philippine archipelago, and an examination of all Chinese merchants?

MR. FELIX: Object to this kind of examination because I understand that question should be addressed to the witness of matters which are within his personal knowledge, but not that he should inform the attorneys where they can obtain the data which they need.

MR. GIBBS: If the representative of the government were impartial officials, they would furnish us this information without our asking for it.

MR. FELIX: The question discussed is not a legal question, and all this data requested is immaterial and cannot influence in any way the case now at bar.

A If the witness is obligated to furnish the information such as appears in that table, it would be necessary

to make a census of all the Chinese merchants, because we only have part of the data which there appears.

Q What part of the data furnished in this table on page 7 of Exhibit "C" do you not have in your office? Referring to the year 1922.

A I could only furnish the number of licenses issued by the office subject to merchant's tax. As I said before, the receipts issued for taxes paid do not show the nationality of the taxpayers, and we could not segregate them by nationality in order to determine the number of retail merchants of each municipality, the number of wholesale merchants of each nationality, the total amount of sales made by the merchants of each nationality, the capital employed by the manufacturers of each nationality, operatives employed by the manufacturers, also by nationality.

Q So far as you know, are the present numbers of the different nationalities about the same in proportion to each other as they were in the year 1912?

A I cannot state.

Q Has there been any marked change in the proportion, that you know of?

MR. FELIX: Objected to, as the witness is not competent to answer that question in view of the statements made by him to a previous question. I object to it on that ground.

A I cannot state, because this is the first time that I have seen that table, and I was not at that time in the Bureau of Internal Revenue, at the time when that was prepared by it.

Q Mr. Posadas, are you willing to furnish us any information that you can on this subject?

A (Question not answered.)

Q Have you any information, as the present Chief of the Bureau of Internal Revenue, of any particular change in the proportionate number of different nationalities engaged in business, since the year 1912?

MR. FELIX: Objected to as the witness has already answered this question.

A I believe I have already answered this question.

Q To your knowledge, has there been any marked change in the proportion of merchants of different nationalities since the year 1912?

MR. FELIX: Objected to, as the witness is not competent to answer this question, and on the further ground that it is completely immaterial.

A According to my personal opinion, I believe that there must have been a change in the proportion, taking into account the fact that during these last years there has been quite a development of the Americans and Filipinos in business.

Q And according to this opinion, is it not a fact that there was an increase in the number of Chinese merchants during these last ten years?

A Possibly, yes.

Q Isn't that your impression, that the proportion of Chinese merchants has increased?

MR. FELIX: Objected to, as the witness is not competent to answer. He was not in the Bureau of Internal Revenue at that time. If he is without knowledge, his testimony would be without value.

A Yes.

Q Now, will you or the Fiscal furnish me with the statistics which have already been prepared for this trial?

A The fiscal must say. I have given him certain information and if he desires to give you this information, he may.

Q What information have you furnished to the fiscal?

MR. FELIX: Objected to on the ground...

A I do not remember what I have given him, as we have given definite information.

Q In writing?

MR. FELIX: Objected to, as the information is of a confidential character.

A As I have said, I do not remember.

Q Please state the data which you remember having furnished the fiscal.

MR. FELIX: As in one of the previous questions which is related to this part of the testimony, the fiscal was referred to, I will state for my part that I am willing to furnish the data which he has furnished me, so long as the party who asks for it agrees to offer it in evidence, because if the purpose is merely to get access to our documents, the request is without right.

Q Do you wish to state under oath, Mr. Posadas that you don't remember what data you furnished in writing to the fiscal?

MR. FELIX: I wish to state to the witness that he is not required to state the data which he has furnished, so long as this is confidential, and we are not required to furnish it to the petitioners.

A In view of the statement of the fiscal, I refuse to answer the question.

Q This data which you have furnished to the fiscal, are they or not taken from your files?

MR. FELIX: The same objection.

A Yes sir.

Q And you have no other motive for refusing this data, aside from the objection of the fiscal?

A Yes, because the fiscal is representing us in this case, and we must submit to his counsel in regard to the production of documents.

Q And this purpose, as you understand it, is to obstruct the course of the proofs of the petitioners?

MR. FELIX: I object to the use of the word "obstruct" and move to strike it from the record, because the refusal to consider a petition for something to which they have not the right does not constitute an obstruction, and I object to the witness answering the question, as being offensive to the witness and to the respondents, and I suggest to the witness that he do not answer the question.

MR. GIBBS: I object to the fiscal suggesting to the witness that he dc not answer.

MR. FELIX: I wish it also to appear that I, in defending the rights of the respondents set forth the reasons on which my objections are based. I object to the use of words which can be and are offensive to this representation, and which are improper, when he is not required to answer them. I will accept the responsibility.

A I do not believe that it is, because it is possible that the data which I have furnished him will be presented here in due time.

Q But what objection have you, in addition to the objection of the fiscal, to their presentation at the present time?

MR. FELIX: I wish to have it appear that this representation does not object to the presentation of these documents. What we object to is to their examination and non-presentation, because it appears to us that they have no right to their examination, no more than we have to the examination of the documents belonging to the petitioners.

A Because I consider them as official documents, of confidential character, which are in possession of our representative, who will decide as to whether they should be presented. I am saying that I do not remember what is in this data which I have furnished, because I do not at this moment remember them without referring to my records.

Q I am not asking that you give us information regarding all of them, but of those which you can remember.

MR. FELIX: The same objection.

A I remember at this moment of a table showing the kind of books of account which the Chinese keep, according to data obtained by us from the various provinces.

Q That is the list which you mentioned in paragraph 8 of Exhibit "B"?

A Yes sir.

Q And that is the only one you can remember?

A Also I furnished data regarding the taxes not paid which were discovered by the Bureau.

Q Will you give me a copy of this?

A With permission of my attorney, yes sir, the one who represents us.

MR. GIBBS: I again ask for it.

MR. FELIX: The fiscal, at the petition of Mr. Gibbs, delivers it. (Does so.)

MR. GIBBS: I ask that the fiscal furnish me the other data which he has, without the necessity of going through this method of asking the witness regarding the other matters.

MR. FELIX: Objected to, as I do not see the necessity of furnishing this.

Q What other matters do you remember, what other data do you remember, once you have refreshed your memory?

A That is all I remember.

Q These are the only ones you can remember?

A These are the only ones, yes sir.

Q Can you remember approximately?

A As I have said before, without referring to my records I cannot answer.

MR. FELIX: Is this page to be marked, as well as the statement referring to the Chinese merchants? That is to say, the data regarding the Chinese business in the Philippine Islands, issued by the office of the witness?

MR. GIBBS: I am not marking them. If we want to mark them, we will. We reserve the right to mark them or present them as it appears convenient to us to do so. I will ask that this statement of June 30, 1923, be marked as Exhibit "D".

Q Does this statement, Exhibit "D", refer to Chinese merchants only, or to merchants of all nationalities?

A To all nationalities.

Q And the part corresponding to the different nationalities has not been segregated from the total?

A No sir.

Q This Exhibit "D" has a certificate as follows: "This

is to certify that the following statement shows the assessments made during the year 1922 by the field examiners of the Income Tax Division, including Income Tax assessments originated by the Inspection Division. (Taxes P8,610.00, and Compromises, P1,390.00)". Then follows the statement. If you wished to furnish statistics which would assist the court in determining the necessity of the enforcement of Act 2972, as against the Chinese merchants, why didn't you segregate the items applicable to Chinese merchants from those applicable to other merchants, of other nationalities?

MR. FELIX: Object to that part of the question stating that Act 2972 being against the Chinese.

A As stated before, we do not segregate the tax payers by nationalities.

Q But you have a very recent report, which is easily accessible, of all fines imposed upon Chinese merchants for failure to report all of their sales, have you not?

A Before answering that question, I would like to know to what authority you refer regarding the imposition of fines?

Q To the Bureau of Internal Revenue.

A The Bureau of Internal Revenue is not empowered by law to impose fines.

Q Well, the penalties mentioned in Exhibit "D", were they not imposed by the Bureau of Internal Revenue?

A In regard to the surcharges on transactions, yes, we have them in the office.

Q Well, the penalties mentioned in Exhibit "D" were imposed by your office, or not?

A I have answered the question.

Q I want to know if all the penalties mentioned in Exhibit "D" were imposed by the Bureau of Internal Revenue or not?

A Yes sir.

Q Now answer the previous question. Why did you not segregate in this table, Exhibit "D", the penalties imposed upon Chinese merchants?

A I have stated that the Bureau of Internal Revenue does not classify the taxpayers by nationalities.

Q But in order to impose penalties, the penalties mentioned in Exhibit "D", it is necessary to make an investigation which shows the nationality of the merchant upon whom the penalty is imposed, is that not a fact?

A Not in all cases. In the case of Income Tax, it is there shown whether it is stranger, resident, or non-resident.

Q So that you have no way of ascertaining what part of the penalties mentioned in Exhibit "D" were imposed on Chinese?

A We would have to investigate the nationality of each and every one of the persons against whom penalties were imposed for taxes not paid.

Q All you have to do is to refer to the reports of sales, and the declarations of Income Tax to ascertain this?

A In the statement of taxes there is no statement of nationality. In the income tax declaration there is.

Q But with the exception of the few cases in which the Chinese do not make use of their Chinese names, you know by merely looking their signature that they are Chinese, isn't that a fact?

MR. FELIX: Objected to as it is based on a false premise.

A No sir, because a man with a Chinese name might be a Filipino.

Q This is one of the possibilities to which you refer when you don't wish to answer, is that not a fact?

A No sir, it is not a possibility. It is a fact, which can be proven.

Q Can you mention any merchant who has a Chinese name, but who is a Filipino?

A At this moment I cannot, no sir.

CROSS EXAMINATION BY

MR. FELIX:

MR. GIBBS: I now serve notice that I am going to present a motion to the court for an order to the respondents to furnish the data requested.

Q Do you know the owners of the establishment on the Escolta known as "Syyap & Co."?

A Personally I don't know them.

Q Do you know if the owners known as "Syyap" are Filipinos or Chinese?

A At least my personal impression is that they are Filipinos.

Q Showing you this document, which for identification I will ask be marked Exhibit "2" for the respondents, and ask you if you recognize this document?

A Yes sir.

Q In what office was that prepared?

A In our office, the office of the Bureau of Internal Revenue.

Q Under whose direction?

A Under the direction of the chief agent.

Q The data contained in that exhibit was taken from the records of your office?

A Yes sir, from the reports rendered by our agents.

Q And who is this "J. Posadas" who has certified this?

A I myself.

Q Please sign that copy.

A (Witness complies.)

Q You, as Acting Collector of Internal Revenue and Deputy Collector, have you put out of business, or ordered put out of business, any Chinese merchants who have not kept their books in accordance with Act 2972?

MR. GIBBS: Objected to as improper cross examination.

MR. FELIX: I withdraw the question.

Q Showing you Exhibit "D", please explain what those additional assessments are which are referred to in that exhibit.

A They refer to taxes not paid, which were discovered by our examiners.

Q How were these taxes which were not paid discovered?

A By means of examination and comparison of the books of account of these merchants.

Q By the simple declarations of the merchants who were the subject of these surcharges to which Exhibit "D" refers, would it have been possible for the Bureau of Internal Revenue to have collected these additional assessments?

MR. GIBBS: Objected to as improper cross examination, and as completely immaterial, in view of the fact that the witness has already testified that he has no knowledge as to whether or not any Chinese are included in that table.

MR. FELIX: I insist on the question, because I wish to have an exhibit of the petitioners explained.

MR. GIBBS: But I did not present it, and until it is presented as evidence, and until it is in evidence, you have no right to examine him on it.

A No sir.

Q Showing you this document, which for identification I will ask be marked Exhibit "3" for the respondents, I ask you if you know this document, which appears to have been signed by you.

A Yes sir.

Q This forms part of the records of your office?

A Yes sir, it forms part of the records of my office.

MR. GIBBS: I object to any testimony referring to Exhibit 3, because the contents of the supposed certificate is not the subject of an official certificate, but an effort on the part of the respondents to present their testimony by means of a certified document, and furthermore it is improper cross examination, because we asked no questions on the subject, and furthermore, the witness by whom it is being attempted to identify this document, is not the one who signed it, and cannot be cross examined on the subjects contained therein.

MR. FELIX: Exhibit 3 is an official document, on which has been placed the seal of the office, and it refers to an endorsement dated the 22nd of September, 1921, that is to say, much before the present case was instituted. I wish also to have it appear that this document, Exhibit 3, has been referred to by the witness as part of the direct examination of the witness, in which a question was asked referring

to a supposed amendment to Act 2972, or a proposed amendment.

MR. GIBBS: After the statement of the fiscal, we repeat our objection.

MR. FELIX: That is all for this witness, reserving the right to recall him as a witness for the respondents in due time.

RE-DIRECT EXAMINATION BY

MR. LA'O:

Q With reference to the last paragraph of this Exhibit 3, do you know of any contradictory statements made by Wenceslao Trinidad?

MR. FELIX: Objected to on the ground that the best evidence would be the testimony of Wenceslao Trinidad himself.

MR. GIBBS: This question is on the ground that this document is signed by Wenceslao Trinidad.

A I do not remember.

Q In reality, Mr. Posadas, you do not know, of your own knowledge, anything regarding the statements which appears in Exhibit 3? Is that not so?

A Yes sir, I know, because practically everything that was said in this document are matters of record in my office.

Q But you say that this document is a copy of an endorsement?

A Yes sir.

Q This endorsement is signed by Mr. Trinidad, is that not so?

A Yes sir.

Q And these conclusions which he has stated there you

don't know, because you did not make them yourself, is that not a fact? You have testified only as to the correctness of the endorsement, is that not a fact?

A And I can state that I concur in the last paragraph of this endorsement, in which the necessity of the books of account of the merchants shall be kept in English, Spanish, or other local dialect, is referred to.

Q Nevertheless, answer the question.

A (Question not answered.)

MR. GIBBS: We ask that the answer of the witness be stricken, as not responsive (Referring to answer commencing "And I can state that I concur etc.").

MR. FELIX: Object to the motion of the petitioners.

MR. GIBBS: We reserve the right to question the witness further in regard to these documents when offered in evidence by the respondents.

Witness excused.

The hearing was then continued until 8:30 a. m., July 6, 1923.

SESSION OF JULY 6, 1923.

The above entitled cause came on for continuation of the hearings on this 6th day of July, 1923, at 10:30 a. m.

The same appearances were noted as at the previous hearings.

LIM CHAY SENG, 52 years of age, married, 22 Rosario, merchant, a witness on behalf of the petitioners, was duly sworn and testified as follows:

DIRECT EXAMINATION BY

MR. LA'O:

Q Can you read Spanish, or English, or Tagalog, or any dialect of this country?

A No sir. I read a little, but I write none.

Q What kind of business are you engaged in?

A Dry goods.

Q More or less what is the volume of your business?

A Do you refer to capital?

Q Yes.

A ₱100,000.00.

Q At the present time are you making money or losing money?

MR. FELIX: Objected to as immaterial.

A During the last year I didn't make any money, but this year I haven't struck a balance yet; it may be that there will be a loss.

Q In normal times, what is your annual profit?

A In normal times I could make from six thousand, seven thousand, eight thousand, nine thousand, up to ten thousand pesos.

Q Could you support the employment of a bookkeeper who knew how to keep your books in Spanish, English, or one of the local dialects?

MR. FELIX: Objected to as immaterial. The witness is not a party to the action now before the court.

A Even if I could support an employee who knew how to keep books in ordinary characters, I believe it would be useless, because I do not read Filipino characters, and I could not read what he wrote.

Q Is it necessary for you to understand your books to carry on your business?

A Naturally. It is natural for a merchant to want to know about the condition of his business, or the items which are put in his books.

Q How many employees have you?

A About six employees.

Q What nationality are they?

A Chinese all.

Q Is any of them competent to keep your books in any other language but Chinese?

MR. FELIX: Objected to on the ground that the witness is not competent to answer that question.

A None of them.

Q Can any of them read or write in any other language except Chinese? Can they read Spanish, English, or any local dialect?

MR. FELIX: The same objection.

A No sir. They know a little; they know a few figures, the names of the drygoods that we handle, for example, "Diez yardas", "Ocho yardas", "Percal", etc.

Q In case that you were compelled to have a foreign employee to keep your books, could you continue with the same employees that you have now, or would you have to substitute others who would be able to make themselves understood with the bookkeeper?

MR. FELIX: Objected to as immaterial.

A It would be completely impossible, because my employees only understand Chinese. Sometimes, in the different duties of the day, they make rough notes in Chinese, and in the evening they are given to the employee who keeps the books, and the employee who keeps the books must understand Chinese in order that they can understand the employees with greater ease.

Q If this law were put into effect, and it became necessary for you to employ a foreign bookkeeper, could you continue your business?

MR. FELIX: Objected to as immaterial.

A I couldn't continue the business. We couldn't do anything.

Q Why not?

A Because we all, commencing with the manager (*cabecilla*), learned Chinese from our cradle, and this language is used in our daily duties.

Q How many kinds of merchandise do you handle in your store?

A Two hundred or three hundred kinds.

CROSS EXAMINATION BY

MR. FELIX:

Q How long have you been in the Philippines?

A About thirty five or thirty six years.

Q And all that time you have remained in the Philippines?

A I haven't been here all the time. Every three or four years I return to China on vacation.

Q But of all these thirty five or thirty six years, how long a time have you been in the Philippines?

A In all, taking into consideration that I haven't made note of it, I have spent about six or seven years in China.

Q In other words, you have spent twenty nine years in the Philippine Islands?

A More or less. I can't state definitely.

Q And these twenty nine years have been passed in Manila?

A Yes sir.

Q And during this time you have learned to speak Spanish and Tagalog, haven't you?

A I speak it. If I did not, how could I do business with the Filipinos? But I don't read or write it.

Q But you said a while ago that you could read a little in Spanish?

A I could read names.

Q You were caught once by the agents of the Internal Revenue Bureau for having declared less than the amount which should have been declared to that office, of the sales made in your business, is that not a fact?

A I was arrested, yes, but it was not my fault. The case went to the Court of First Instance, and I won it, and it was all due to the fact that I could not express myself.

Q Is it not a fact that you lost the case, rather than won it, as you said?

A I won the case in the Court of First Instance, but not in the Supreme Court. I lost it there. This was due to the fact that I had to say many things but I couldn't really explain myself well. It was due to a deficiency in the ability to explain myself.

Q You have spoken of a "cabecilla" in your business. Do you mean to say that you have another "cabecilla" or chief?

A No sir, I am the general manager ("cabecilla" superior").

Q Is your business a retail or wholesale business?

A Yes sir, wholesale and retail.

Q In your sales at wholesale, do you prepare invoices in your store?

A Yes sir.

Q The larger part of your customers in that store are Filipinos, aren't they?

A No sir.

Q What are they?

A The greater part are Chinese.

Q Your place of business is a drygoods store on Rosario, isn't it?

A Yes sir.

Q Do you mean to say that the greater part of your customers are Chinese?

A Yes sir, but we do not only sell in Manila, but in the provinces, and those who are in the provinces are Chinese.

Q In your dealings with Filipinos, Spaniards, or other foreigners who are not Chinese, the sales or transactions are conducted not in Chinese but in the language of the customer, that is to say, in English, Spanish, or Tagalog?

A It must be so.

Q And the invoices which you prepare on your sales to Filipinos or foreigners who are not Chinese are prepared in English, Spanish, or Tagalog, is that not true?

A Yes sir, I have already told you that. As for example, ten yards of percal, that is made to appear in the invoices.

Q You are not a bookkeeper, are you?

A I know something about accounting, but I do not keep the books, as I am the manager. My duties are outside, watching out for things in the store.

Q Answer my question. You are not a bookkeeper?

A I am not the bookkeeper. I am the manager.

Q You have never examined your employees to determine what knowledge they have of English, Spanish, or any other language, have you?

A There was no necessity to examine them, because I can see with my own eyes. For example, occasionally in place of writing the names of the customers in the place provided for that, they...

Q Answer my question. Have you examined them, or not?

A As I do not know the ordinary characters, I cannot tell the grade, or how far their knowledge goes of the ordinary characters.

Q Do you periodically revise your books of account?

A Yes sir, as a merchant I have to revise them, go over them, daily.

Q And you examine them before you prepare the declaration which you present to the Bureau of Internal Revenue, is that not a fact?

A Naturally, I consult my books, take the total of sales, and afterwards I make out the declaration.

Q Do you make the declaration yourself, personally?

MR. GIBBS: Objected to, as not the best evidence.

A I copy the sales from the Internal Revenue book, and afterwards I make the declaration.

Q Do you make it personally?

A I do not present it personally.

Q But do you prepare it yourself?

A There is no necessity for doing anything more than copying the totals of the sales appearing in the Internal Revenue book and put it in the declaration and that is usually done by the clerk.

Q Under your supervision?

A Yes sir.

Q And regardless of this revision and supervision in the preparation of the declaration which you submit to the Bureau of Internal Revenue, you were fined for not having put in the proper declaration?

MR. GIBBS: Objected to as not the best evidence. The record of the case itself would be the best evidence here.

MR. FELIX: Before presenting the record itself, it is necessary to lay the foundation. What is the reason for that question.

A I did not make any declaration which is not in accord with the sales. After checking it, I made out the check and put the necessary stamps covering the tax to be paid. Therefore, when I took the case to the Court of First Instance, I won it. The record is here. While I was arrested, it was on account of the fault of the agents of the Bureau of Internal Revenue, who wished to injure me.

Q The question is, that notwithstanding this declaration prepared after your revision and under your supervision, is it not a fact that you were fined for not having declared all that you should have declared in the tri-monthly declaration which you submitted to the Bureau of Internal Revenue?

MR. GIBBS: Objected to as calling for the conclusion of the witness, and for not being the best evidence, and that the question is an abuse on the part of the fiscal of his faculties as an attorney.

MR. FELIX: I protest and move to strike the last phrase of the objection of the attorney, Mr. Gibbs, as improper, and in this respect I wish to have it

appear of record that what I have asked for is not an opinion, but a fact, and that is whether or not he was fined.

MR. GIBBS: Make it also appear that as the fiscal knows very well, the best evidence as to whether or not he has been fined is the record itself; that the witness denies and is denying his guilt of having hidden any sales, and the effort of the fiscal is directed to having him admit what he denies, as to whether or not he has made an under declaration to the Bureau of Internal Revenue as to his sales.

MR. FELIX: The allegations of Mr. Gibbs are erroneous, and in any event, the best evidence as to whether or not he was fined is the testimony of the witness, and the second best evidence is to present the record, and to do that there must be a basis laid. I put the question for the purpose of showing whether or not the declaration...

A I desire to explain. I paid the fine under protest, and I started the action against them to recover the fine paid. I won the case in the Court of First Instance. They appealed the case to the Supreme Court. I lost the case, and the money which I paid was lost, but they didn't put any fine on me.

Q This payment which you wished to recover was a payment in addition to the regular tri-monthly tax paid, wasn't it?

A No sir. I refused to pay in the beginning, but they said I should pay it, and that I could make the payment under protest, and if I was not *conforme*, I could appeal the case to the Court of First Instance. I did

that, and I won the case in the Court of First Instance. They appealed the case, and I lost it.

Q Answer the question. Is it not a fact that the amount which you claim you paid under protest was an additional payment, a surcharge, which was paid in addition to the amount of the tax?

A I have paid the entire amount of the tax. I issued my check and put on the stamps required to be paid as tax. Afterwards they came back and took the license, and they made me pay an additional payment. I refused to pay it, but they said I could pay it under protest. And I did it that way.

Q This amount which you paid as a surcharge covered sales not covered in the declaration which you submitted, is that not a fact?

A No sir. After the license was returned at the end of the year, they stole some stamps from the license which they returned, and they told me that these stamps were lacking, and that I should make the additional payment, and that I could do it under protest.

Q Is it not a fact that they put this surcharge on after a revision of your books, made by the agents of the Bureau of Internal Revenue?

A No sir. My books of account were all right, and the only thing that was lacking, as they said, was the stamps on the license. I had returned my license at the end of the year. After they had received it, they came back and said that there were stamps lacking.

Q My question is whether or not it is a fact that this surcharge was made after the agents of the Bureau of Internal Revenue checked over your books. Is it not

a fact that this surcharge was added on after they had made an examination of your books?

MR. GIBBS: Objected to as not the best evidence, and I protest against this lengthy examination regarding the contents of a record.

A No sir; it was on account of the lack of these stamps, because the books were in accord with the Internal Revenue. I issued my check covering the amount of the sales tax.

Q Were you never prosecuted for violation of Act 2972, that is, the bookkeeping law?

A No sir.

Q And the functionaries of the Internal Revenue Bureau, nor any functionary of the City of Manila or of the Government of the Philippine Islands, have never prohibited you from keeping your books in Chinese, is that not a fact?

MR. GIBBS: Objected to as the Act itself, Act 2972, prohibits the use of any other language but English, Spanish, or any local dialect, and that from the presentation of the complaint in this case, the public functionaries have been prevented by injunction from interfering with the question of the language used in the books.

MR. FELIX: In answer to the attorneys, I will say that this Act went into effect on the first of January, 1923, and this case was filed only in March, of this year.

A No sir.

Q You, who have said that you could not comply with the Accounting Law, Act 2972, have you made any ef-

orts to put yourself in condition to comply with the provisions of that law?

MR. GIBBS: Objected to as completely immaterial, and has nothing to do with the validity of the law.

A I haven't the means now to learn. I am an old man, and have gray hair.

Q You have many times made contracts for the sale of goods in writing haven't you?

A No sir, and for the reason that I cannot speak it, and cannot make contracts. I sell from hand to hand.

Q Including your provincial sales, you sell from hand to hand?

A Sometimes I receive letters, and I send the goods ordered to them, and sometimes the customers themselves come, and as I have my goods displayed in the store, they select what they want, and I dispatch it.

Q You do business with the banks in Manila?

A Yes sir.

Q And your transactions are carried on in Spanish or English, are they not?

A As I have already said, I carry it on in Spanish, in a way; I put my name, and I write figures. That is all I do.

Q And these declarations which you submit to the Bureau of Internal Revenue, and which are prepared under your supervision, are in Spanish, aren't they?

A The only thing they put in there is, January, so much, February, so much, March, so much, and afterwards we get the totals of these three amounts.

Q And the Income Tax return is also prepared in Spanish?

A Speaking of the Income Tax return, I have to employ

a lawyer because it gives me a headache, and furthermore, it is only made once a year.

Q And you prepare it in Spanish?

A I don't prepare it personally. Another person, who knows how to do that. I make it first in Chinese.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q In what year did this question come up regarding which the fiscal made such a fuss, with the Internal Revenue?

A About 1918 or 1919.

Q Were your books examined from time to time by the Chinese inspectors of the Bureau of Internal Revenue?

A Yes sir, frequently. Every two or three months they come to inspect them.

Q Do you know any of the Chinese inspectors of the Bureau of Internal Revenue?

MR. FELIX: Objected to as immaterial.

A I don't know them by name. I know them by face. I know they are Chinese, because they know Chinese characters.

Q Do you keep a complete set of books of account in Chinese?

A How could I run a business if I did not have a complete set of books?

Q Have the Chinese inspectors, or any other inspectors of the Bureau of Internal Revenue made any complaint regarding the manner in which you have kept your books?

MR. FELIX: Objected to as asking for hearsay testimony, and as completely immaterial.

A No sir.

Q What was the amount of this surcharge which they demanded that you should pay?

A I don't remember very well if it was twelve hundred or eighteen hundred pesos, but I remember that I paid it under protest.

BY MR. LA'O:

Q These invoices which you prepare, are they made out on printed forms, or not?

A They are on letterheads.

Q Have you ever been arrested for any violation of the Internal Revenue laws?

MR. FELIX: Objected to as immaterial.

A Aside from that which you have mentioned, no.

Q But that was only a civil case, where they collected an amount, and you paid it under protest, and presented a complaint in the Court of First Instance to recover it, is that not a fact?

A It was a civil case. I was the complainant in that case.

Witness excused.

At 11:30 a. m. the hearing was suspended until July 10, 1923.

SESSION OF JULY 10, 1923.

The hearing of the above entitled cause was continued on this 10th day of July, 1923, at 2:40 p. m.

The same appearances were noted as at the previous hearings.

PO SUN BIO, 36 years of age, married, merchant, 240 Rosario, a witness for the petitioners, was duly sworn and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What kind of mercantile business are you engaged in?

A Dry goods.

Q How long have you conducted that business?

A About sixteen years.

Q How long have you lived in the Philippine Islands?

A About eighteen years.

Q How large a stock of goods have you?

A I have a capital of seventy five thousand pesos.

Q How many employees have you?

A I have ten employees.

Q What is their nationality?

A All are Chinese.

Q How many bookkeepers have you?

A I have two Chinese bookkeepers.

Q Can you read or write any other language than the Chinese language?

A No sir.

Q Can any of your employees read or write any language other than Chinese?

MR. FELIX: Objectjed to, and move to strike the previous answer. on the ground that the witness is not qualified to testify as to that.

A Very little.

Q How many books of account, or how extensive are the books of account kept by you?

A I have four boks; sales book, purchase book, ledger, and daybook.

Q Do you keep an inventory book?

A I have an inventory book, but the inventory is only made out once a year, at the end of each year.

Q Is it necessary to keep a full set of books in the business conducted by you?

A Yes sir. It is necessary that I keep books so that I can have a record and see and know what is going on.

Q Could you get along in the conduct of your business with just a sales book, for example?

A With that book alone, it could not be done.

Q State whether or not you preserve your books after the year for which they are kept.

A Yes sir, to know what business has been going on.

Q How long do you keep your books?

A I have my books there by year, so that I can know what business transactions I have had with various persons.

Q Have you preserved your books of account for all the years that you have been in business?

A Yes sir.

Q State whether or not your books have been examined by Chinese and Filipino agents of the Bureau of Internal Revenue?

A Yes sir.

Q How frequently?

A I cannot state the number of times.

Q Did any of the agents of the Bureau of Internal Revenue find any errors or under declarations or make any complaint about the manner in which you have kept your books?

MR. FELIX: Objected to as immaterial.

A No sir, because I did not commit any error, and furthermore, I am the only person in charge of the books of account; I make the entries myself.

Q Have you made any under declarations of sales?

A No sir, never.

Q Have you ever defrauded the government of any taxes due it?

A No sir, and furthermore my business is a partnership, and I must make the entries in the books without error. Even if I take a handkerchief for my personal use, I make an entry for that also.

Q What was the approximate amount of your sales tax for the year 1922?

A The sales for the last year amounted to around six hundred thousand pesos, around that amount.

Q And your sales tax was one percent of that amount?

A Yes sir.

Q Could you continue operating your business if you were compelled to comply with Act 2972?

A I cannot continue if it is made operative.

Q Why not?

A Because I would be made entirely blind.

Q Couldn't you or your Chinese bookkeepers learn to keep your books in a language other than Chinese in a short time?

MR. FELIX: Objected to as the witness is not competent to answer as to that.

A It couldn't be done, because even when the Filipinos go to China to do business, we do not require them to keep their books in Chinese characters, because even if they study Chinese they won't know it, even if they study for ten years.

Q Do you know of any competent bookkeepers who could keep your books in any language other than Chinese, if you were compelled to comply with Act 2972?

MR. FELIX: Objected to as immaterial.

A Even if I were told that one knew, I couldn't read them, and tell what benefit I was getting from his services.

Q But do you know of any such competent bookkeepers?

MR. FELIX: The same objection?

A No sir, I don't know any.

CROSS EXAMINATION BY

MR. FELIX:

MR FELIX: I move to strike the testimony of this witness on the ground that same is immaterial, because even though it were a fact that the application of Act 2972 would be prejudicial to him, he is not a party to this action. At the same time, I wish it to appear that the interrogatory addressed to this witness is practically the same as that directed to all of the previous Chinese witnesses.

Q How long have you been in the City of Manila?

A About eighteen years.

Q You speak and write Spanish and Tagalog, don't you?

A I do not know how to write at all, but I speak a little, but I don't have the same accent as the Filipinos have.

Q In the greater part of the cases where your books of account were examined by the agents of the Internal Revenue Bureau, these employees were Filipinos?

A Yes sir.

Q You are not a bookkeeper, are you?

A No sir, but I have a bookkeeper.

Q In your establishment, when sales at wholesale or retail are made, invoices are prepared, aren't they?

A The greater part of the invoices which are issued are made out in Chinese, because the customers are Chi-

nese and live in the provinces, and we issue very seldom invoices in ordinary characters.

Q But you do issue them, don't you, in European characters?

A When Filipinos go there to make purchases, we issue invoices in ordinary characters, but this is very seldom.

Q But when you make them in ordinary characters, you make them in Spanish or Tagalog, don't you?

A I don't prepare them, but I have an employee in the store who knows a little, a very little, of the names of the articles.

Q Have you Spanish and Filipino customers in the provinces?

A I have no Spanish customers, but I have Filipinos.

Q How do you carry on correspondence with these Filipinos in the provinces? In Spanish, Tagalog, or Chinese?

A No correspondence is exchanged. If they want anything from me, they come to Manila, come to the store, and indicate what they want.

Q Do you mean to say that none of your Filipino provincial customers have ever purchased anything from you during all of the time that you have been in the Philippine Islands?

A No sir, they don't order anything in writing. If they want anything, they come to my store and indicate what they want, but some Chinese customers have placed orders with us by means of letters.

Q You keep an internal revenue book, don't you?

A Yes sir, that book in which we make the entries of daily sales, but only the figures are written.

Q These figures are in arabic characters?

A In ordinary characters. The sum is made of these items, and afterwards the sum total is arrived at.

Q Up to now, no employee of the city or government has impeded you from keeping your books in Chinese, have they?

MR. GIBBS: Objected to on the ground that the law itself prohibits that the books shall be kept in Chinese characters.

A I have never been impeded, because I make them out in Chinese characters.

Q You have said that if the provisions of Act 2972 were carried into effect you could not continue your business. Now, I will ask you, if from the 21st of February, 1921, have you made any effort to put yourself in condition to comply with the provisions of Act 2972?

A Even if I should study, taking into account my age, I couldn't learn. This is learned from childhood.

Q Answer my question. The question is not whether you have studied Spanish, English, or Tagalog, or any other local dialect. The question is if you have made any effort to put yourself in position to comply with the provisions of Act 2972.

A There is no reason for me to make the effort, because I couldn't learn.

Q You have never been prosecuted for any infraction of Act 2972, have you?

A No sir.

Q Neither have you examined your employees to determine the grade of knowledge or ability they possess in the use of Spanish, English, or any local dialect?

A I know that they all know how to say "Yes", "No", the names of the articles, such few words.

Q Answer the question, whether you have ever examined them, or have not examined them, to learn their ability to handle Spanish, English, or any other local dialect.

A There is no necessity, because I know positively that they only speak a little, the names of the articles, and so forth. Furthermore, who am I to examine them, I who know so little?

Q In previous years you have presented your statements to the Bureau of Internal Revenue covering Income Tax, haven't you?

A Yes sir, annually.

Q And this income tax return you prepare in Spanish, don't you?

A I make use of other persons.

Q You present this income tax return in English or Spanish, don't you?

A No sir; I call them once a year when I need them. I make up a rough draft; afterwards I call in a Chinese and Filipino to prepare it. After it is prepared, I consult others, who know more about it, to find out if it is right or not.

Q And this Chinese and this Filipino who prepare the Income Tax declaration are employees of yours, are they not?

A No sir; I call them once a year when I need them.

Q You stated that you first prepare your income tax return in rough draft in Chinese. In preparing this return in Chinese, do you mean to say that you have

before you a printed form of this return, to know just what items you have to declare?

A No sir, I make a rough draft in Chinese. After this I check up the entries to see if they are properly made, showing receipts and disbursements, purchases and sales, then I check up to see if I have made or lost money.

Q Now, in making up this rough draft of your income tax return, do you have before you a copy of the printed form which is distributed by the Bureau of Internal Revenue?

A No sir, I don't know how to read.

Q Do you mean to say that you prepare your income tax declaration without having before you the printed form of the Bureau of Internal Revenue, showing the data which it requires?

A The one who knows about that is the one whom I employ. I make the rough draft in Chinese, and this man is the one who makes out the form.

Q If you do not consult this form issued by the Bureau of Internal Revenue, how can you prepare this form without knowing what the items are?

A Why shouldn't I know? I make to appear in the rough draft the receipts and deliveries, because it is kept in the same form as the books are kept. The only difference is in the writing. I do not know how to read, but the way I make it in Chinese is the same.

Witness excused.

LIM KUN HONG, alias LIM HAN BOON, 48 years of age, married, merchant, 224 Calle Dasmariñas, a witness for the petitioners, after having been duly sworn testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you lived in the Philippine Islands?

A I came here in 1916.

Q What kind of mercantile business are you engaged in?

A In the sale of rice.

Q What capital have you invested in the business, approximately?

A Seventy thousand pesos.

Q How many employees do you have?

A Six.

Q What nationality are they?

A All are Chinese.

Q How many bookkeepers have you?

A One.

Q In what language are your books kept?

A The books are kept in Chinese.

Q Can you read and write any language but Chinese?

A No sir.

Q Can any of your Chinese employees read or write any language other than Chinese?

A They know very little, and write very little.

Q Can any of your employees, Chinese, read or write any language other than Chinese sufficiently to enable them to keep books?

MR. FELIX: Object to the question, and move to strike the previous answer, as the witness is not competent to answer that question.

A No sir.

Q How many books of account do you keep?

A About ten books.

Q Is it necessary for you to keep a full set of books in order to operate your business?

A I could use a smaller number of books, and I could also increase the number.

Q Without reference to the number of books, you keep a doybook, ledger, and book of inventories?

A I have.

Q And a sales book?

A Yes sir.

Q Would you get along without any of these books in the operation of your business?

A If I can not make use of these books, I will have no eyes.

Q Will you state whether or not you preserve all of your books of account?

A Yes sir, all of them.

Q State whether or not your books of account have been examined frequently by agents from the Bureau of Internal Revenue?

A Yes sir.

Q Were these agents at any time Chinese?

A Two of them come every time they come to examine my books, one Filipino and one Chinese.

Q Have the agents of the Bureau of Internal Revenue ever found any under declarations or other errors in your books?

MR. FELIX: Objected to as immaterial.

A Never, and in all the inspections which they have made, they have stated that they were all right.

Q Did you ever defraud the government of any sales tax or any income tax due it?

A I never did.

Q Do you remember what the amount of your sales tax was for the year 1922?

A Around two hundred and seventy to two hundred and eighty thousand pesos.

Q Are you referring now to the amount of your sales or the amount of tax you paid?

A The amount of the sales.

Q And you paid a sales tax of one per cent on your total sales?

A Yes sir.

Q Could you continue operating your business if you were compelled to comply with Act 2972?

MR. FELIX: Objected to as immaterial.

A No sir.

Q Why not.

A In the first place, I am an old man, and even though I should study, I could not learn, taking my age into account. I would have to stop my business to study. Even if the judges here started to learn Chinese, I don't believe that they would be able to learn.

Q Do you know of any competent bookkeepers who could keep your books in any other language than Chinese, if you were compelled to comply with the provisions Act 2972?

MR. FELIX: Objected to, as judging from the previous testimony of this witness, he is not competent to testify.

A No sir.

CROSS EXAMINATION BY

MR. FELIX:

Q Isn't it a fact, Mr. Lim Kun Hong, that you speak Spanish very well?

A No sir.

Q Isn't it a fact that in regard to this Act 2972 you appeared before a Committee of the Philippine Senate?

A Yes sir, in the last year I was questioned.

Q Is it not a fact that you pronounced a discourse in Spanish?

A No sir. If I don't speak it, how can I make a speech? I was questioned, and my answers were translated by one Di Bun Peng. I don't quite remember if that was the interpreter's name.

Q You have said that your books of account were inspected by the inspectors of the Bureau of Internal Revenue. This inspection, or revision, to which you refer, was just a casual inspection of your books?

A They came and asked me some questions: "How much did you sell on such and such a day?" I said so much. They opened my books to see if I was right, and they said it was right. They have come to ask me with my books of account in hand.

Q And this inspection to which you refer, when these Filipino and Chinese came to inspect your books, lasted about ten minutes?

A They must have been there for more than ten minutes, because they asked me how much I sold on one day, and I answered them, and they opened the books and examined and saw that I told the truth.

Q How long a time was spent by these agents in inspecting your books?

A Probably more than ten minutes, or from eight to ten minutes.

Q You are not a bookkeeper, are you?

A I have never made any entries in the books. I have a bookkeeper.

Q Answer the question. You are not a bookkeeper, are you?

A I am not a bookkeeper. I am in charge of the business.

Q You don't know bookkeeping, do you?

A I know Chinese accounting.

Q Where did you study Chinese accounting?

A If the Chinese bookkeeper makes an entry, I can read it.

Q But you have not studied Chinese bookkeeping?

A I have not learned it, although formerly I wrote letters for other persons.

Q You have never been impeded by any functionary of the city of Manila, or of the government of the Philippine Islands, from keeping your books in Chinese, have you?

MR. GIBBS: Objected to as the law itself prohibits that he shall keep his books in Chinese.

A They have never been there.

Q And neither have you been prosecuted for infraction of Act 2972, have you?

A No sir.

Q In the sales made by you in your rice business, you prepare invoices which are given to the purchaser, is that not a fact?

A Yes sir.

Q And you have many Filipino, Spanish, and American customers, haven't you?

A Not many. Some few.

Q And the invoices which you issue to your American, Spanish, and Filipino customers are made out in the language of the purchaser, is that not a fact?

A In the store I have a nephew who writes a little, and I have him write them.

Q You present your trimonthly statement of sales to the Bureau of Internal Revenue, is that not a fact?

A We submit, tri-monthly, the Internal Revenue book so that the amounts there appearing as sales may be summed up by them, and they assess the corresponding tax.

Q And you present them in Spanish?

A Yes sir; the figures only are written.

Q Returning to my previous question, in case of sales to your American, Spanish, and Filipino customers, you prepare the invoices in Spanish, English, or Tagalog, don't you?

A No sir, if any employee of mine speaks Spanish, the invoice is prepared in Spanish, because to learn a language is very difficult. How can we issue the invoices in foreign languages yet.

Q Do you mean to say that in the case of sales to Americans, Spaniards, and Filipinos, the invoices are prepared in Spanish, is that what you mean to say?

A The greater part of them in Spanish.

Q You also present annually an income tax declaration, don't you?

A Yes sir.

Q And this income tax return which you present annually to the Bureau of Internal Revenue is prepared by you, is that not a fact?

A We employ another person to prepare it.

Q You review what he writes in connection with your income tax return, don't you?

A I order another person to look at it in my place, because I can not read.

Q This income tax return of yours is prepared in Spanish, isn't that a fact?

A I can not state, if in English or Spanish, because I can not read the ordinary characters.

Q But in filing this return, don't you have to sign an oath as to the correctness of the statements contained therein?

A I have it examined by others who know it, and if they say that it is correct, I agree that it is correct.

RE-DIRECT EXAMINATION BY

MR. PALMA:

Q These employees of yours who prepare these statements in Spanish, have they sufficient knowledge to keep your books of account?

MR. FELIX: Objected to as the witness has not the capacity to answer this question, as he has denied all knowledge of Spanish, English, or any local dialect.

A They can not. What they know is very little.

Q How do you know that it is very little?

MR. FELIX: The same objection.

A Because they have to learn the theory of bookkeeping to keep them. To make an invoice is easy. The names of the different merchandise is all that they have to put down.

Witness excused.

TAN QUA CHUY, 41 years of age, married, merchant, 1043 Calle Aceiteros, a witness for the petitioners, upon being duly sworn testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What kind of mercantile business are you engaged in?

A I have a grocery store, and general merchandise.

Q How many articles, approximately, do you carry in stock?

A I sell many kinds of merchandise, eighty to ninety different kinds.

Q How much capital, approximately, have you invested in your business?

A More than forty thousand pesos, nearly fifty thousand.

Q Approximately what are your annual sales?

A In the last year, for example, my sales amounted to more than three hundred thousand.

Q Were your sales for cash or on time?

A The greater part of them were sales for cash, but the tax paid to the government was based on both sales for cash and for credit.

Q Hoy many employees have you?

A Fourteen.

Q What nationality?

A Chinese.

Q How many bookkeepers have you?

A One only.

Q What salary do you pay him?

MR. FELIX: Objected to as immaterial.

A Fifty pesos a month.

Q Can you read or write any other language than Chinese?

A No sir.

Q Can any of your employees read or write any other language than Chinese?

MR. FELIX: Objected to, as the witness is not competent to answer as to that.

A No sir.

Q Hoy many books and what kinds of books of account do you keep in your establishment?

A In all I use three books.

Q What are they?

A Daybook, ledger, and tax book.

Q Do you keep a sales book?

A We take the total sales. We sell in small quantities.

Q Do you preserve all your books from year to year?

A Yes sir.

Q Have your books been frequently inspected by agents from the Bureau of Internal Revenue?

A Yes sir.

Q In what language are your books kept?

A In Chinese characters.

Q Have the agents of the government found any errors in the amounts of your sales?

A I keep my books according to the daily transactions and I present them to the Internal Revenue Bureau for the corresponding tax, and in preparing these statements I made use, in the years 1918, 1919, 1920, and 1921, and 1922, of a Filipino whose profession is that of paying the taxes for the tiendas, and without my knowing it, that Filipino failed to pay what he should have paid, keeping the balance, and for that reason I was fined.

Q What was the amount of sales upon which he failed to pay the sales tax? Or, in other words, what was the omission from your report?

A There was an omission of fourteen thousand, and I was fined twenty eight. The day before, when I

made a recount of the stamps, I found that they were short; I was going to pay the amount, but it was already too late.

Q Who inspected your books from the Bureau of Internal Revenue?

MR. FELIX: Objected to as immaterial?

A A Chinese.

Q Could you continue operating your business if you were compelled to comply with Act 2972?

A No sir.

Q Why not?

A Because I do not know the ordinary characters at all.

Q Couldn't you or your Chinese bookkeeper learn to keep your books in some language other than Chinese in a short time?

MR. FELIX: Objected to as the witness is not competent to answer as to that.

A I have not the time to learn, because my time is occupied in managing my business.

Q Do you know of any competent, unemployed bookkeeper who could keep your books in any language other than Chinese if Act 2972 were enforced?

A I don't know of any.

Q From what countries do the commodities handled by you come?

A Some of the merchandise comes from Europe, and others from here in the Philippines, or from America, or from Spain.

Q How long have you been engaged in the mercantile business in the Philippine Islands?

A I commenced with this business in the year 1918.

Q Previous to that time, what was your business?

A Formerly I was an employee.

Q Employee of a merçantile firm?
A Yes sir.
Q Belonging to whom?
A Tan Tiam Cheng.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness, because even if the provisions of Act 2972 would be prejudicial to him, it would make no difference, as he is not a party to this action.

Q How long have you been in Manila?
A I have been here more than twenty years in Manila.
Q And these twenty years or more have been passed in the city of Manila. is that not a fact?
A Not all the time, Part of the time I spent in China.
Q How much of the time has been spent in Manila?
A More than ten years?
Q Fifteen years?
A A little more.
Q And due to this long time that you have been in Manila and the Philippine Islands you speak Spanish and Tagalog, isn't that a fact?
A I do not know how to speak Spanish, although I do know how to speak a little Tagalog.
Q You are married to a Filipina, aren't you?
A No sir.
Q You stated that you devoted yourself to business in groceries and "various effects". What are these various effects?
A Sardines, salmon, butter, sausages, potted ham.
Q These are the groceries. What are the "various effects", or general merchandise to which you refer?

A Cigarettes, candy, refined sugar, cacao, coffee.

MR. FELIX: Have it appear in the record that the witness, in mentioning the articles he has, has referred to them as "mantequilla", "chorizos", "café", "cacao", "jamon", using the Spanish words.

MR. GIBBS: I wish it also to appear that the witness has used such few words as he has used in Spanish, so badly that I thought that he was speaking Chinese. His Spanish is defective, as is that of all Chinese.

Q You have testified that you paid a fine because a Filipino agent which you employed failed to pay the tax to the office of the Bureau of Internal Revenue. Is it not a fact that you were fined by the Bureau of Internal Revenue because you failed to show in your declaration all of the sales which had been made by you?

A Everything was set forth in the declaration according to my books.

Q Many articles which you sell, which come from Europe, you import directly, is that not a fact?

A No sir, I purchase them here.

Q Don't you import from Europe or America any of the articles which you sell?

A No sir.

Q You have never been impeded by any functionary of the government of the Philippine Islands, or of the city of Manila from keeping your books in Chinese, have you?

MR. LA'O: We will admit that he has not, with the objection of Mr. Gibbs as to the immateriality of the question.

MR. FELIX: And also that he has never been prosecuted?

MR. LA'O: Yes.

Q You are not a bookkeeper, and have never studied bookkeeping in Chinese or any other language?

A As regards to Chinese bookkeeper, I know my books of account in Chinese.

Q Answer the question.

MR. GIBBS: We admit that he is not a bookkeeper, and that he has not studied it, but that he can supervise his own books.

Q Referring to the inspection of your books, or revision made by the agents of the Bureau of Internal Revenue, isn't it a fact that the greater part of these inspections were made by Filipino agents of that Bureau?

A Filipinos and Chinese.

Q The greater part of the time they were inspected by Filipinos, isn't that a fact?

A The greater part of the time they were inspected by Filipino agents.

Q And the inspection made by the Filipinos as well as by the Chinese lasted about ten minutes, isn't that a fact?

A Sometimes it lasted an hour, and sometimes a half hour.

Q How long have you been engaged in business of groceries and "efectos varios"?

A I commenced with that business in 1918.

Q And since that date, and since the establishment of your business, you have been inspected not more than three or four times?

A Yes, around that, three or four times.

Q You present an income tax return annually, don't you?

A Yes sir.

Q And this return is presented by you in Spanish, isn't that a fact?

A I don't prepare it myself, but I make use of the services of another person, whose business it is that of preparing income tax returns.

Q But you check over that person does, don't you?

A Yes sir.

Q And your income tax return is prepared in Spanish, isn't that a fact?

A I make use of another person to prepare them. I don't know what language he prepares it in.

Q But don't you swear to these income tax returns before you present them to the Bureau of Internal Revenue?

A Yes sir, I sign them.

Q And you mean to say that you don't know in what language they are prepared?

A As I don't know how to read in Spanish or English, I don't know what language they are written in.

Q And you also present these tri-monthly statements of sales for the purpose of the payment of the sales tax, don't you?

A Yes sir.

Q And these statements are presented also in Spanish, isn't that a fact?

A I prepare them in Chinese, a rough draft, and afterwards I call the person who pays the tax, and I dictate it to him

Q You having said that you do not speak Spanish or English or any local dialect, have you, since the 21st of February, 1921, made any effort to put yourself in condition to comply with the provisions of Act 2972?

A No sir, because I haven't time to learn. All of my time is engaged in business.

Q I didn't ask you if you have learned Spanish or English. I asked you if you have made any effort, since the 21st of February, 1921, to put yourself in condition to comply with the provisions of Act 2972.

MR. GIBBS: Objected to, as the question has already been well answered, and this question simply asks the opinion of the witness and not for a statement of fact.

A I haven't time to learn.

Q Have you looked for any Chinese or Filipino employee who is prepared to comply with the provision of Act 2972?

A I do not know where to look for him, because I have no acquaintances who are in condition to do it.

Q But you haven't looked for any, either?

A To search would be useless, because even if I found one, if I had no confidence in him, I could not trust him.

RE-DIRECT EXAMINATION BY

MR. LA'O:

Q Are there any words in Chinese for cacao, salmon, café, sardinas?

A Those are the only names I know.

At this point, the witness having been excused, the hearing was suspended until July 11, 1923.

SESSION OF JULY 11, 1923.

The hearing of the above entitled cause was continued on this 11th day of July, 1923, at 3:15 p. m.

The same appearances were noted as at the previous

hearings, with the exception that Mr. C. A. McDonough appeared in the place and stead of Mr. A. D. Gibbs, as one of the attorneys for the petitioners.

GO SING, 54 years of age, married, merchant, 127 Calle Rosario, a witness on behalf of the petitioners, was duly sworn and testified as follows:

DIRECT EXAMINATION BY

MR. MCDONOUGH:

Q What business are you engaged in?
A Notions.
Q How long have you been engaged in that business?
A Twenty two years.
Q This business has been established in the city of Manila during all of that time?
A Yes.
Q How many employees do you employ?
A I have six employees.
Q What nationality are they?
A All Chinese.
Q Do you keep books of account?
A Yes sir, I keep books of account in Chinese.
Q Do you keep a bookkeeper?
A Yes sir, I have a Chinese bookkeeper who makes his entries in Chinese.
Q How much do you pay him a month?
A He receives five hundred pesos a year.
Q Do you speak, read and write Chinese?
A Yes sir.
Q Do you speak, read or write any other language?
A I speak a little Spanish and a very little Tagalog. English I do not speak at all.

Q Did I understand you to say that you did not write any other language than Chinèse?

A I do not know how to write in ordinary characters. I know how to write in figures.

Q What capital do you have invested in your business?

A About sixty thousand pesos.

Q How much merchants' tax did you pay last year, 1922?

A It didn't run to three thousand pesos. It was about two thousand eight hundred, more or less. If you wish me to state the exact amount, I will have to consult my books of account.

Q Did you establish your business, or did you obtain it any other may? Did you inherit it?

A Formerly, that is, during the Spanish sovereignty, my father had his business established in Iloilo. I was a child at that time. After I had been seven or eight years in China, this establishment was burned, and there was nothing else to do but dissolve it. Afterwards I came to Manila and established my own business.

Q Has the Bureau of Internal Revenue in the past examined your books?

A Yes.

Q Has there ever been any complaint against you on account of any entries in the books, or any failure to report the proper amounts to the Bureau of Internal Revenue?

A No sir. The agents of the Bureau of Internal Revenue came to my tienda, and asked for my books for the previous year to the year when they went there, and they carried them to the Bureau of Internal Revenue, and examined them, and after the examination they said it was all right. They never found anything wrong.

Q The business which you do, is it a wholesale or retail business?

A Both wholesale and retail. My customers in the provinces purchase at wholesale, and I sell here in Manila at retail.

Q When you speak of your customers in the provinces, are they natives or Chinese?

A All are Chinese, with whom I have commercial transactions.

Q Do you have a store here in Manila at retail?

A Yes sir, and I make my sales on a small scale in this establishment.

Q You said a moment ago that you could not write in ordinary characters. What do you mean by that?

A I don't know how to write.

MR. FELIX: We admit that the use of the words "common" or "ordinary" characters, means characters in Spanish, English, or any language other than Chinese.

Q Would it be possible for you to continue your business and carry it on in compliance with Act 2972?

A No sir.

Q Why not?

A I said that I could not continue with my business if I am obliged to comply with that bookkeeping law because, in the first place, we are Chinese, and know how to read in Chinese, and furthermore, our employees are Chinese, and do not understand the common characters. Therefore I could not keep on my business if I keep my books of account in ordinary characters.

Q If you were obliged to keep your books of account in

English, Spanish, or one of the native dialects, would you be able to undestand them?

A No sir, and furthermore I haven't time to learn.

Q Couldn't you learn English, Spanish, or one of the native dialects so that within a year or two you would be able to have your books kept in that language?

A Not at my age, and furthermore I must put my time to the management of my business. If I had to learn other languages at the same time, I would have to put my business to one side, and I consider that at my age I would not be able to learn.

Q Do you know whether it would be possible for you to obtain bookkeepers to keep your books in any other language than Chinese?

A In the first place, I don't know where to look, and furthermore, even though I should find one to keep my books in common characters, I would not be able to understand, and I could not believe much in him, because I would not be able to know myself if he wrote them correctly, or put the proper entries in the books.

Q If you were obliged to have a bookkeeper who would keep your books in English, Spanish, or one of the local dialects, what effect would it have on the other employees as to their effectiveness?

MR. FELIX: Objected to as immaterial, and asking for the conclusions of the witness.

A The effect that it would have on my employees would be that I would have to let them go, and furthermore, if this man that I employed, who knows how to keep books in ordinary characters, should not comply with his duties, and do transactions that I could not understand, it might be that he would bring me

into conflict with the Internal Revenue laws, and the the one effected in each case would be myself.

Q What books do you keep in your business?

A I have an inventory, daybook, ledger, book of receipts and disbursements, and balance book.

Q Do you preserve your books from year to year?

A Yes sir.

Q For how many years? Have you your books now?

A I had my books with me on Calle Nueva until the year 1910, when we had a fire, and I was burned out, but from that time on, that is to say, from 1910 to date, I have all my books.

Q Are you married?

A Yes sir.

Q Have you any family?

A I have a Chinese family, which came from China.

Q And they live with you here?

A Yes sir.

Q How many are there in your family?

A Five.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike all the testimony of this witness on the ground that even though it were true that the provisions of Act 2972 were prejudicial to him, he is not a party to this action.

Q You state that you have six Chinese employees, one of whom is the Chinese bookkeeper, to whom you pay a salary of five hundred pesos a year. Now, this Chinese bookkeeper lives in your tienda, does he not?

A Yes sir.

Q He eats with you, isn't that a fact?

A Yes sir.

Q At your account?

A Yes sir.

Q And he furthermore has a participation in the business, is that not a fact?

A No sir.

Q But doesn't he get a bonus or a percentage of the profits of the business?

A In previous years, that is, during the year when the business made good money, I granted a compensation at the end of each year, but at this time, when the business is not doing very well, how could I give him, as I am losing money.

Q So that in addition to the salary of five hundred pesos, you give him a portion of the profits, if there are any, is that true?

A It is a compensation that I grant of my own free will if the business makes money. That depends entirely on me, if I want to grant it.

Q In a word, you give him five hundred pesos free of board and room and other expenses?

A What expenses?

Q I mean to say that you pay him five hundred pesos, free of board and room, and other expenses such as laundry, cines, clothing, etc.

MR. McDONOUGH: Objected to as captious.

A Laundry, yes.

Q What else?

A Cigarrettes, and if he wanted to spend any other money, I gave it to him for his account.

Q Taking into account the time you have been in the city

of Manila, you have learned to speak Spanish, isn't that a fact?

A The words that are ordinarily used in the store in Spanish I have learned.

Q And in the same way, taking into consideration the time you have been in the city of Manila, you also speak Tagalog?

A I came here and at first I was in Iloilo; later I came to Manila, and all that I know are the words which are used in business in the store.

Q And you, due to your long stay in Manila, also know how to read Spanish and Tagalog?

A No sir.

Q Not even Spanish?

A No sir.

Q You have said that the agents of the Internal Revenue Bureau have examined your books; they didn't examine your books more than three or four times during the time you have been in business, isn't that a fact?

MR. MCDONOUGH: Objected to as immaterial, it being within the province of the Collector of Internal Revenue to examine the books whenever he desired, and if he didn't examine them very frequently, that was his own fault.

A From what I remember, that is to say, the agents of the Internal Revenue Bureau have been there two times to examine the books, and I can't say the times they came while I was in China, but as to the Internal Revenue book, they came there frequently to examine it.

Q And this examination or inspection which they made of your internal Revenue book didn't take over five or ten minutes, isn't that a fact?

A I cannot state positively the time, because the inspectors came there and got the internal revenue book, and they asked questions, for example on such and such a day how much did I sell; I told him so much, and on such other day how much, and I answered, and they checked up with the books to see if I answered correctly.

Q And after asking these questions, and after looking at the internal revenue book, they left?

A Yes sir, they left the internal revenue book.

Q And only once did they take your books of account, isn't that a fact?

A From what I remember, they asked for them twice, but they asked for the books of previous years, sometimes they asked for the books as far back as three or four years.

Q And when they took your books to the office of the Internal Revenue Bureau, you don't know what the agents of the Bureau of Internal Revenue did with your books there, do you?

A They were the books, all the books, showing the operations, the receipts and disbursements, the transactions which had taken place, and afterwards they called me to get the books, and said they were all right.

Q But you didn't see them revise them; that is just a supposition of yours?

A No sir.

Q The greater part of the times that the internal revenue inspectors went to your office to check up these internal revenue books, the inspectors were Filipinos, isn't that a fact?

A Do you refer to the inspectors who took the books to the Internal Revenue office?

A No, I refer to the inspectors who went to your tienda to inspect your internal revenue books.

A Yes sir, the greater part of the times they were Filipinos.

Q You are not a bookkeeper? You don't know bookkeeping, do you?

A I know the method of keeping books in Chinese.

Q Have you studied bookkeeping in Chinese?

A I did not go to school to specialize in bookkeeping, but from my childhood I have been in business, and as I know Chinese I have learned by watching to see how the books are kept.

Q You have never been impeded by any functionary of the government of the Philippine Islands or of the city of Manila from keeping your books in Chinese, have you?

MR. MCDONOUGH: Objected to on the ground that Act No. 2972 in itself prohibits the keeping of books in any other language.

A I have never been impeded at any time, even though I have heard that the government wishes to change the method of keeping books.

Q You have never been prosecuted at any time for infraction of Act 2972?

MR. MCDONOUGH: Objected to on the ground that this Court has suspended by injunction the carrying out of the law.

A No, sir, they have not come to arrest me.

Q Nor has there been a complaint filed against you?

A In what case?

Q My question is, you have not been prosecuted for infraction of Act 2972?

A No, sir.

Q And you submit each year an income tax declaration, isn't that a fact?

A I submit my income tax return annually.

Q Do you prepare it?

A No, sir.

Q Do you revise the income tax return which is prepared for you?

A We copy the receipts and disbursements, the transactions of the business, and the loss and profit, and afterwards we give to that agent whose business it is to prepare the statements for the payment of income tax.

Q But my question is, that you revise the statement after it has been prepared by these agents, isn't that a fact?

A I do not know how to read. The only thing I know is to see the receipts and disbursements, the loss and the gain, and all this is represented by figures. I know how to read the figures.

Q Answer the question. Do you revise the declaration after it is prepared by this agent?

A I do not know how to read the written words, but I know the figures.

Q And you revise this, is that not a fact?

A I revise the figures, and if the figures are correct, I am satisfied.

Q Since the 21st of February, 1921, up to date, you have made no effort to put your establishment in position

to comply with the provisions of Act 2972? Isn't that a fact?

A My head is full of affairs referring to my business, and and I have no time to study, and even if I should find time, I could not learn, as I am old.

Q I didn't ask if you could learn. I asked if you have attempted to put your business into position to comply with the provisions of Act 2972?

A There is no other remedy.

Q (Question repeated through another interpreter).

A It is absolutely impossible to make the attempt.

Q Why do you say it is impossible for you to make any effort so that your establishment can comply with Act 2972?

A Because in the first place I don't know these languages myself, neither do my employees know them, and in this case I can find no means to do it.

Q Is that the only reason why you say it is impossible for you to comply with the provisions of Act 2972?

A That is the only reason I have.

Q What articles are these which you class as notions?

A These articles consist of different articles, among which are pencils, note books, combs, buttons, needles, thread, knives, fans, etc.

Q Do you yourself import these articles from abroad?

A I purchase them from various establishments here. If they are American goods, I buy them from American importers; if they are Spanish goods, I buy them from the Spanish, and if from China, I buy from the Chinese.

Q Do you not import anything from abroad yourself?

A Directly, no sir. I give my orders sometimes to the

American agents, and these write to foreign countries, and they send them here (indenting).

Q And you carry on correspondece with these foreign firms in the conduct of your business, don't you?

A If you refer to the orders placed in the hands of the agents, once the order is given they give me a list.

Q And this list is prepared in English or Spanish, depending upon whether the business houses are Spanish or English, isn't that so?

A If the agent is an American, he writes in American, but the people from here usually write in Spanish.

Q And in the event that you ask the importing houses to bring goods in for you, or take orders for you to be filled outside, you make a written contract with them, a contract in writing, don't you?

A The importing house gives me a note, or a list, so that when the goods arrive I can check them with the list.

Q Don't you make a contract with these selling houses?

A I make a verbal order to them, and they take note of the orders which I make, and they give me a list in order to act as a check list when the goods arrive.

Q And when the goods arrive you check by means of this list the effects which have arrived, don't you?

A In this list which is given me to assist me, I put in Chinese the goods which I have ordered, on the back of the list itself, so that when the goods arrive, even though I can not read ordinary characters, and I can not write, I compare it with the list in Chinese on the back of the list.

Q Aside from this list which the importing houses give you, isn't it a fact that you and the agents of the

importing houses make a contract so that when the goods arrive you can not refuse to accept them?

A The contract consists in this verbal order which I place with them. The contract is that list of which they give me a copy, a duplicate copy of, one copy of which comes to me and one copy remains with them.

Q And in that list, which is a contract, you agree to accept the goods when they arrive?

A In dealing with merchants, the word is sufficient.

At this point a dispute about the interpretation arose, and after a lengthy discussion, the answer was continued as follows:

A (Continued) When I want the goods, I go to the importer and tell him what I want, and they make a list of the goods with the prices. When I see that the prices are correct, I put my chop thereon.

At this moment the Chinese interpreter abruptly left the room. Mr. McDonough made the following statement for the record:

MR. MCDONOUGH: When the interpreter translated the above answer Mr. Sy Cip questioned the translation, his disagreement with the translation being concurred in by Mr. Sy Chieng, the interpreter assisting the fiscal. The interpreter became insulting and left the room. In view of this action of the interpreter, we ask that the Commissioner ask the Court of First Instance to furnish us another interpreter, in order that we may continue with this case, and that he advise us when an interpreter has been furnished.

The hearing was thereupon suspended until July 12, 1923, at 10:00 a. m.

SESSION OF JULY 12, 1923.

The hearing of the above entitled cause was continued on this 12th day of July, 1923, at 10:00 a. m.

The same appearances were noted as at the previous hearing, Mr. McDonough still appearing in the absence of Mr. Gibbs.

The witness on the stand at the close of the hearing of July 11, 1923, GO SING, was recalled to the stand for further examination, and after having been reminded that he was still under oath, testified as follows:

CROSS EXAMINATION (Continued) BY

MR. FELIX:

Q In your statement, when you sell articles either at retail or wholesale, you prepare an invoice, do you not?

A If the sale is at wholesale, we prepare an invoice, but if the sale is at retail and they buy for cash, we don't prepare any invoices.

Q And your invoices are printed forms, which you fill out when needed, isn't that so?

A No, sir.

Q How are they?

A If the customers are Chinese, we issue invoices written in Chinese characters.

Q And if the customers are Spanish or Americans?

A If we have to prepare an invoice in a language we don't know, we have the customer prepare the invoice himself.

Q And you sign it?

A We put our chop.

Q And you put on the chop if the invoice is prepared by the Spanish, Filipino, or American customer?

A If a customer asks us for an invoice, we ask him to please make out the invoice. For example, if he asks for two dozens, and we check up the items to see if it says two dozens and we check the prices.

Q In other words, you revise the invoice after it is prepared.

MR. McDONOUGH: Objected to as calling for the conclusions of the witness.

A We compare the figures showing the amount of merchandise and the price, and if it is correct we put our chop.

Q And you or your employees in the tienda do that?

A Sometimes our clerks who make the sales, they know how to read figures. If the figures showing the quantities are correct, they put the chop.

Q And they also put the chop if the names of the articles are likewise correct?

A They can not compare the names of the merchandise.

Q Do you mean to say that so long as the figures are correct, you put your chop, regardless of whether or not the balance of the invoice is correct?

A If the quantities are exact, we presume that the invoices are corrcet.

RE-DIRECT EXAMINATION BY

MR. McDONOUGH:

Q I understood you to say that you did both a wholesale and a retail business?

A Yes, sir.

Q Now, your wholesale business, is that done with natives?

MR. FELIX: Objected to, as the witness has already answered in the affirmative.

A We sell almost entirely to Chinese and the Filipinos buy at retail, twenty to thirty centavos.

MR. MCDONOUGH: It is admitted that this witness and all witness produced by us up to the present time, with the exception of Mr. Posadas, are Chinese.

Q How much profit do you make from your business a year?

MR. FELIX: Objected to as immaterial.

A It is not fixed. Sometimes if times are good we gain, and other times we lose, and some years we don't make any profit.

Q How much income tax did you pay last year?

A I paid as income tax around four hundred pesos.

RE-CROSS EXAMINATION BY

MR. FELIX:

Q You also sell on credit at retail and wholesale?

A The sales on credit at wholesale are made to Chinese, and at retail to some Filipinos.

Q And in the sales at retail which you make to the Filipinos, these sign the corresponding vales, isn't that a fact?

A Yes, sir.

Q And these vales are written in Spanish or Tagalog?

A It appears that the greater part of them are written in Spanish, but we can only read the amount of the vale.

Q And you accept these vales the greater part of which are written in Spanish?

A Yes, sir.

Witness excused.

TENG CHONG, 28 years of age, married, merchant, 502

Calle Nueva, a witness on behalf of the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. MCDONOUGH:

Q What is your nationality?

MR. FELIX: We admit that he is a Chinese.

Q What is the nature of your business?

A Groceries and the sale of cigarrettes and cigars.

Q How long have you had that business?

A More than thirty years.

Q How long have you had the business personality?

A I have been in that store more than ten years, but as manager, more than three years.

Q Who had the business before you?

A My father.

Q Is your father living?

A Yes sir.

Q How many employees do you have?

A Four or five, including my father.

Q What are their nationalities?

A All are Chinese.

Q What is the capital invested in your businss?

A More than thirty thousand pesos.

Q Do you keep a bookkeeper?

A Yes sir.

Q How many?

A One.

Q How much do you pay him?

Q Forty pesos a month.

Q Does he do anything else besides keep books?

A As in all Chinese stores, the employees do other work besides keeping books.

Q What other work does he do besides keeping books, in general?

A Assists in selling goods.

Q In what language are your books kept?

A Chinese.

Q Have you ever had any complaint made to you by the Bureau of Internal Revenue in regard to your books, or in regard to your report in regard to your sales tax?

A No, sir.

Q The books of your establishment, do you preserve them?

A Yes, sir.

Q For how many years do you preserve them?

A Since we moved our business to that street, we have kept all the books, something like three or four years.

Q Is any one of your employees, other than your bookkeeper, able to keep your books in any other language than Chinese?

MR. FELIX: Objected to as the witness is not competent to answer.

A They all know Chinese characters.

Q Can any of them, other than the bookkeeper, keep books in any other language than Chinese?

MR. FELIX: The same objection.

A They don't know even how to read in any other language but Chinese.

Q Could you keep books yourself in any other language but Chinese?

A No, sir.

Q Your present bookkeeper, does he write any other language than Chinese?

MR. FELIX: Objected to as the witness is not competent to answer, and as not the best evidence.

A He does not know.

Q If Act No. 2972 were enforced, could you continue your business?

MR. FELIX: Objected to as calling for the conclusion of the witness.

A I believe that I could not do business, because we don't know how to read in any language except Chinese.

Q Couldn't you carry on your business with a bookkeeper who might write Spanish or Tagalog?

A We couldn't find a foreign bookkeeper, because we don't know how to read foreign languages.

Q If you had a bookkeeper who kept your books in English, Spanish, Tagalog, or any other dialect, could you tell whether or not he was keeping your books correctly?

A I cannot.

Q Don't you think that in a year or two you could learn Spanish, English, or any one of these dialects?

A I could not.

Q Why?

A I would have to study.

Q What has been the character of your education in Chinese?

A I studied Chinese characters more than ten years.

Q Has the Bureau of Internal Revenue examined your books?

A Yes, sir.

Q Your business, is it wholesale or retail?

A The greater part is wholesale; the retail is very small, one or two clients.

Q With whom do you do your business Do you have any native customers?

A No sir.

Q Do you keep a retail store?

A We sell at retail, but we have no customers. In that business we don't have customers.

Q What do you mean by making sales at retail? They just come in and purchase, then go out?

A Yes sir, and they pay.

Q Do you sell to any natives on credit?

A No sir.

Q The goods which you have in your establishment, where do you get them from?

A I have purchased these articles from Chinese and from some foreigners.

Q What class of goods are they? Are they American, European, or what?

A American goods.

Q What was the amount of your merchants' tax last year, approximately?

A I think it was more than one thousand pesos, but I would have to look at my books in order to answer that question categorically.

Q In normal times what are your annual profits, approximately?

A In good times we make money, but in bad times sometimes we don't make anything, and sometimes we lose.

Q About how much profit do you make? For instance, for the years 1921 and 1922, how much did you make, approximately?

A In 1921 I am not sure; I believe there was a profit of from one to two thousand pesos.

Q And in the year 1922?

A Around that, more than one thousand pesos; I am not sure.

Q Is it necessary for you to understand your books in order for you to carry on your business?

A Naturally, because the books are the eyes of the merchant.

Q Do you know what you would have to pay for a bookkeeper who might keep your books in Spanish, English, or any one of the local dialects?

MR. FELIX: Objected to as a hypothetical question.

A As I have heard, there are some at from four hundred to five hundred pesos, others at two hundred.

Q Per year or per month?

A I believe it to be monthly.

Q What books of account do you keep?

A Ledger, sales book, daybook, auxiliary delivery book, book of receipts and book of disbursements, seven in all.

Q Is it necessary to keep all of these books in your business?

A Yes sir.

Q Have you ever underpaid the goverment any taxes which might be due them in connection with your business?

A Never.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike all of the testimony of this witness on the ground that even though it is true that the provisions of Act 2972 are prejudicial to him, or would be prejudicial to him, he is not a

party to this action, and for that reason his testimony is completely immaterial and impertinent.

Q You state that you have five employees, including your father, all Chinese. Now, all of these five employees, including your father, live together at your tienda, No. 502 Calle Nueva, isn't that a fact?

A These are five persons who live in that house.

Q And you maintain them, don't you?

A Yes sir.

Q And that includes their laundry?

A Yes sir.

Q In other words, this salary of forty pesos which you give your bookkeeper is free of board, room, and laundry?

A The forty pesos is salary. The establishment furnishes his room, his board, and his washing. . . . . .

Q And aside from that salary, you, as manager of the business, give him a bonus in case the establishment makes a profit?

A If the business makes a profit, we make him a gift, but these last years there has been no profit.

Q And this gift amounts to some hundreds of pesos?

A That depends on the desires of the proprietor.

Q Are you the proprietor?

A My father. I am the manager.

Q Answer the question. If the profit warrants it, this gratification has amounted to some hundreds of pesos in years past, hasn't it?

A That depends on the generosity of the proprietor.

Q But answer the question.

A Since we have had that business, and the business has

not gained anything, we have not given any gratification or gift.

Q If I should show you a Chinese book, could you read it?

A Yes sir.

Q Aside from you and your bookkeeper in your tienda, your other employees don't know how to read and write Chinese, do they?

A All my employees can read and write in Chinese.

Q Do you import your goods direct from other countries?

A I purchase from foreign houses. I have purchased them here.

Q And in the purchase of these goods from these foreign houses, you make contracts with the agents of these importing houses?

A If the purchases are in small amounts I make them verbally, and if the purchase amounts to hundreds of cases, they send me a document.

Q Which you revise as manager?

A After this document is presented to me, I put some Chinese characters on the reverse.

Q But you revise this document which is presented to you for your signature?

A I see only the amounts.

Q Without checking up the words which appear opposite these figures?

A With merchants we have confidence.

Q Do you mean that you put your stamp on this list of merchandise without checking anything only the figures? Is that what you mean to say?

A I look at the figures only, because if the figures are right, the quantities, I sign it.

Q And this list is the contract between yourself and the

importing house for the goods which you desire to purchase, is that not a fact?

A After seeing the number of cases and the amounts, if they are correct, I sign it.

Q The question is, is this the contract?

A I don't know what they call it, if a contract or not.

Q But you consider it a contract of purchase and sale?

A I understand that it is a custom of the merchants, that they send it to me, and I sign it.

Q And many times the goods appearing in this list are not delivered to you immediately, because they have to be ordered from America and outside?

A We have to await the arrival of the goods.

Q You have never been impeded by any functionary of the government of the Philippine Islands or of the City of Manila from keeping your books in Chinese, is that not a fact?

MR. MCDONOUGH: Objected to on the ground that Act 2972 itself prohibits the keeping of books in any language other than Spanish, English, or one of the local dialects.

A No one has been there.

Q You have never been prosecuted for infraction of Act 2972, up to date?

A No one.

Q You mean by that you have never been prosecuted?

A I haven't been up to now.

Q The Internal Revenue Bureau inspectors have only inspected your books upon two or three occasions, isn't that a fact?

MR. MCDONOUGH: Objected to as immaterial.

A Frequently.

Q But the only book they inspected was your internal revenue book, and not your books of account, isn't that a fact?

MR. McDONOUGH: Objected to as immaterial.

A They inspected my books after having inspected my internal revenue books. They speak Chinese.

Q The period of time they employed in this inspection has only been five or ten minutes?

A Sometimes they occupied considerable time in the inspection.

Q That was on rare occasions only, isn't that a fact?

A Sometimes only.

Q That long time that you refer to is a matter of only half an hour?

MR. McDONOUGH: Objected to as immaterial.

A More than an hour.

Q And the greater part of the time it was only about ten minutes?

A An hour.

Q Referring again to these lists that came to you as contracts between yourself and the importing houses, these lists are prepared in Spanish, isn't that a fact?

A I do not know if they are in Spanish or not. They are written in ordinary characters.

Q You prepare, annually, an income tax declaration, isn't that a fact?

A Yes sir.

Q And this return which you prepared you presented it to the Internal Revenue Bureau annually?

A There are agents who devote themselves to that work, who prepare it.

Q And this income tax declaration is revised by you before you swear to it, isn't that a fact?

A Only the figures. If they are correct I sign it.

Q And this income tax declaration is prepared in Spanish, isn't that a fact?

A I do not know.

Q You have customers who are English, Spanish, and Filipinos, isn't that a fact?

A No sir, they are all Chinese.

Q You are not a bookkeeper, are you? You don't know anything about the science of bookkeeping, do you?

A I know bookkeeping.

Q Where did you study it?

A I have studied Chinese, and once I know Chinese. I learned bookkeeping or know it by having learned Chinese.

Q Do you mean to say that involved in the acquiring of education in Chinese is included the acquirement of the knowledge of bookkeeping?

A One has to study it to learn it.

Q Answer the question, whether the study of how to write Chinese carries with it a knowledge of bookkeeping.

A I have not studied it.

Q Then it does not form a part of it?

A You have to learn it.

Q How long have you been in the city of Manila?

A More than ten years.

Q And due to your long stay in the city of Manila, you speak and understand both Spanish and Tagalog, is that not a fact?

A I can understand some words, but I do not speak it.

Q You know the terms that are employed in the store?

A I understand them.

Q You present a tri-monthly statement for sales tax?

A Yes sir.

Q And this declaration is prepared in Spanish, isn't that a fact?

A Nothing is prepared except the figures.

Q You prepare them?

A I put the figures only.

Q What efforts have you made since the 21st of February, 1921, up to date, to prepare yourself to comply with the provisions of Act 2972?

A I have heard the attorneys in the Chamber of Commerce say that there is an order from the courts which suspends the operation of this law.

Q This was only recently, wasn't it?

A Before, also.

Q When?

A I have read it in the Chinese newspapers.

Q That was in 1920, wasn't it?

A I don't remember.

Q A long time ago? A considerably long time ago?

A Not long ago.

Q How many years ago?

A How many years ago what?

Q Did you hear that Act 2972 was suspended?

A After reading the newspapers I knew; I don't remember when I read it.

Q Have you no idea, and can't you calculate, more or less, when you read this in the newspapers?

A A merchant who has much to attend to cannot occupy himself in trying to remember these details.

Q But anyway, it was more than two years ago?

MR. MCDONOUGH: Objected to as argumentative.

The witness has stated that he does not remember.

A I think it was a year, or more than a year.

RE-DIRECT EXAMINATION BY

MR. MCDONOUGH:

Q How much is the expense of the board, room, and washing of your bookkeeper? How much would it amount to a month?

A More than ten pesos, approximately.

RE-CROSS EXAMINATION BY

MR. FELIX:

Q You treat your employees well as regards to the comforts of life?

A We all have the same thing, both the heads of the firm and the employees.

Q And you eat well?

A We all have the same thing.

Witness excused.

The hearing at this point was suspended until further notice.

SESSION OF AUGUST 6, 1923.

The above entitled cause came on for a continuation of the hearings on this 6th day of August, 1923, and the following proceedings were had.

The same appearances were noted as at the previous hearing, with the exception that Mr. Gibbs again appeared, Mr. McDonough being no longer present.

GO SIN CHONG, Christian name LORENZO EMILIO, 30 years of age, married, proprietor *sari sari tienda*, 817

Juan Luna, a witness on behalf of the petitioners, was duly sworn, and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q In what name do you do business, your Chinese name or your Christian name?

A Chinese name.

Q What kind of merchandise do you sell in your tienda?

A In good times, more than twenty pesos I could sell, and in other times more than ten pesos daily.

Q But you don't understand the question. I want to know what kind of articles you sell.

A Cigars, cigarettes, liquors, and various articles.

Q About what is the value of the stock of goods you carry?

A More than two hundred pesos.

Q Do you keep books of account?

A A Chinese book.

Q What books of account do you keep in Chinese?

A Books for the use of tienda, in which I make entries of all the transactions.

Q How many books do you keep?

A One book only, taking into consideration the character of the business. I write in the book at night only.

Q How long have you been engaged in business as a merchant in the Philippine Islands?

A Since 1918.

Q Can you read and write Chinese characters?

A Yes sir.

Q Can you read or write any other language than Chinese?

A No sir, not except Chinese.

Q Do you keep any employees in your tienda?

A There are two of us, myself and my companion.
Q Are you partners.
A Yes sir.
Q What nationality is your partner?
A Chinese.
Q What is your nationality?
A Chinese.
Q Does your partner read and write Chinese characters?
A My companion doesn't know how to read or write Chinese or any other language.
Q Do you know approximately what your yearly profits are?
A Several hundred pesos a year.
Q Can't you say about how much your net profit is each year?
A From one hundred to two hundred pesos, net profit.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though Act 2972 were prejudicial to him, he is not a party to this action and therefore his testimony would be completely immaterial.

Q As owner or proprietor of a *sarisari tienda,* you have had a license issued to you, is that not a fact?
A Yes, sir.
Q And this license was issued to you in your Christian name, Lorenzo Emilio?
A In the name of Go Sin Chong.
Q How long have you been in the Philippine Islands?
A Since 1918.

Q Before that date, weren't you here?

A No, sir.

Q And since 1918, have you resided constantly in the City of Manila?

A Yes, sir.

Q By the character of your business you have commercial relations with Filipinos who go to your tienda to make purchases at retail?

A We speak the ordinary words that are used in the tienda, such as "A package of cigarettes", or whatever it may be.

Q In one word, since you arrived here in 1918, your customers have been Filipinos, that is, the greater majority of them have been, if not all?

A The larger part of my customers are Chinese, because I live in a Chinese neighborhood, because alongside my tienda there are Chinese stores, lumber yards, iron works, and a place where ginger is prepared.

Q Between what streets is your tienda located?

A A little above Azcarraga, towards Tondo.

Q Due to your five years in the Philippine Islands, you speak Tagalog, don't you?

A I know the ordinary words for things such as they ask for in the tienda, such as cigarettes, cigars, sardines, salmon, and things like that.

Q In a word, you know the names in Tagalog and Spanish of the articles in your tienda?

A "Gatas", or milk, and some other things that I don't know the names of, and the Filipinos indicate what they want.

Q You state that you have only one book of account, isn't that a fact?

A Yes, sir.

Q And this is the ledger of purchases and sales?

A For example, today, for how much money I have purchased such goods, and in the evening we have sold so much.

Q In addition to this book, you keep an Internal Revenue book, don't you?

A Internal Revenue tax book.

Q You prepare that book, don't you?

A Yes, sir.

Q So that you do know how to write arabic characters?

A Only the figures I know how to write.

Q Besides your partner, you have no other employee in your tienda?

A No, sir.

Q What is your partner's name? Is he this man here? (indicating a Chinese seated in the court room).

A No, sir.

Q What is his name?

A He stayed in the tienda.

Q What is his name?

A Ching Sara.

Q You state that you have a net profit of from one to two hundred pesos a year. In this profit is not included your living expenses, is it?

A I don't draw any salary in the tienda. We live there only.

Q The question is this, if this one or two hundred pesos is the profit after having discounted all expenses, including your living expenses.

A Yes, sir, I have to make something out of my labor.

Q In other words, you clear one to two hundred pesos,

and your companion also, also after having discounted living expenses.

A This one to two hundred pesos is the net profit of the business, we have to divide that between us two.

Q How much did you sell yesterday in your tienda?

A Yesterday from sixteen to seventeen pesos, around that.

Q Don't you make fifty percent in your business?

A There is no such thing; there is no such profit.

Q What is the percentage of profit on the articles you sell?

A At the very highest it is twenty percent.

Q And the minimum?

A Five to ten per cent.

Q You haven't studied bookkeeping or accounting, have you?

A No, sir.

Q And the preparation of this only book is done with the aid of God, according to your best lights?

A As I have stated, for example today so much was sold, this amount was set down in the book, and we knew how much was spent in the purchases. Don't forget to consider that this is a *sari-sari tienda* we are speaking of.

Q You purchase the goods which you sell in the tienda from the larger stores, don't you?

A From those who sell in the market, and from the larger establishments also.

Q Don't you purchase from the large tiendas also?

A The *sari-sari tiendas* purchase only in very small quantities.

Q What is the value of the gods you have in your tienda today?

A More than two hundred pesos.

Q Did you get married in the Philippine Islands?
A No, sir.
Q You know how to read Spanish, don't you?
A No, sir.
Q You have never been prosecuted for violation of Act 2972, have you?
A No, sir.
Q Nor have the functionaries of the government of the Philippine Islands nor of the City of Manila ever prohibited you from keeping your books in Chinese, have they?

MR. GIBBS: Objected to as immaterial.

A No, sir.

RE-DIRECT EXAMINATION BY

Q Do you keep any sales book in English or Spanish or another local dialect?
A No, sir, we don't know how to write anything but Chinese.

Witness excused.

CHUA PING, 24 years of age, single, *sari-sari* merchant, 474 Juan Luna, a witness on behalf of the petitioners, was duly sworn and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What is your nationality?
A Chinese.
Q How long have you lived in the Philippine Islands?
A Since 1918.
Q What kind of business are you engaged in?
A Sari-sari tienda.

Q What is the extent of your stock of goods?
A From two hundred to three hundred pesos.
Q Have you any employees?
A No, sir.
Q Have you any partners?
A I have no partners.
Q Has any one charge of your tienda now while you are up here testifying?
A I have a relation who is there now.
Q Do you live in the same place where you have your tienda?
A Yes, sir.
Q What kind of goods do you sell in your tienda?
A *Sari-sari* and articles of various kinds at retail.
Q About how much net profit do you make each year?
A A net profit of from one hundred to two hundred pesos.
Q Do you keep books of account?
A No, sir, I only keep the Internal Revenue tax book.
Q And you don't read or write Chinese?
A Yes, sir.
Q Don't you keep any books in Chinese characters at all?
A No, sir.
Q Don't you keep your sales book in Chinese?

MR. FELIX: Objected to as already answered.

A I don't keep books because the sales we make are of one, two, or three centavos. How could we make these entries in them.
Q Your internal revenue book, in what language do you keep it?
A Chinese.
Q How do you keep these internal revenue books that you say you keep in Chinese?

A I don't know how to write anything but Chinese.

Q State to the commissioner whether in this sales book you keep a record of each sale made by you.

A Yes, sir.

Q Do you read or write any language other than Chinese?

A No, sir.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witess on the ground that even though the enforcement of Act 2972 would be prejudicial to him, he is not a party to this action, and for that reason his testimony is completely immaterial and impertinent.

Q I show you this paper (Exhibit 1), and ask you if you can read the words there in Chinese.

A (Reading) This Law No. 2972 is now in force.

Q What does it say after that?

A Yu Cong Eng.

Q Since your arrival in the Philippine Islands in 1918 you have resided in the city of Manila up to this time, haven't you?

A Yes, sir.

Q And during this period of five years you have devoted yourself to the business of running a *sari-sari* tienda, haven't you?

A Yes, sir.

Q And your customers who go to that tienda, are Filipinos, aren't they?

A The greater part of them are Filipnos.

Q And since 1918 your customers have been Filipinos, isn't that a fact?

A There were some Chinese customers and Filipinos.
Q But the greater part are Filipinos, isn't that a fact?
A Yes, sir.
Q Filipinos who do not understand Chinese, isn't that a fact?
A They don't know Chinese.
Q And you had to communicate with them in Tagalog, isn't that a fact?
A I speak a little Tagalog, the Tagalog of the tiendas.
Q Who is this relative that you have in the tienda?
A Chua Kai.
Q What relation is he to you
A He is my brother.
Q What time do you open the tienda daily?
A At five o'clock in the morning.
Q What time do you close it?
A Eleven o'clock or twelve o'clock.
Q Who makes the purchases for your tienda?
A I do.
Q And you have frequent necessity to replenish the stock in your tienda, isn't that a fact?
A Yes, sir.
Q And during these times when you go out to make purchases, who stays in the tienda?
A My little brother (hermancito).
Q How old is he?
A Eighteen years.
Q So your brother also works in the tienda, isn't that a fact?
A Yes, sir.
Q In other words, your brother is your employee?
A I give him no salary, because he is my brother.

Q He lives at your expense?

A Yes, sir.

Q What is the value of the stock in your tienda now?

A From two hundred to three hundred pesos.

Q How much do you sell a day?

A More than ten pesos up to more than twenty.

Q How much did you sell yesterday?

A More than ten pesos.

Q How much more?

A More than fifteen pesos.

Q How much more than fifteen pesos?

A From fifteen to twenty or thirty centavos.

Q This one to two hundred pesos which you say you make a year as net profits is after deducting the expenses of your maintenance as well as that of your family?

A It is the net profit.

Q That is, after deducting the expenses of your subsistence and that of your family?

A I have no family.

Q Then the expenses of the subsistence of your brother as well as yourself?

A Yes, sir.

Q And after deducting the amounts which you send to China for your family?

A The money which I send to China is not discounted from the net profits.

Q What do you mean to say by that? Do you mean to say that the only amount you send to China is this one hundred to two hundred pesos, or apart from this sum do you send other amounts?

A I send very little to China. I still have some left from the profits.

Q The Internal Revenue book which you submit to the Bureau of Internal Revenue is not in Chinese, is it?

A It is in Chinese.

Q You have never studied bookkeeping, have you?

A I know a little of Chinese bookkeeping.

Q Where did you study Chinese bookkeeping?

A In China.

Q In what college?

A In Tin Kau, above Amoy.

Q To what grade did you attain in that college? Primary?

A Primary (primer enseñanza).

Q And that is the only education you have had?

A Yes, sir.

Q You have never been arrested or prosecuted for violation of Act 2972?

A No, sir.

Q Nor have any functionaries of the Bureau of Internal Revenue, or of the Government of the Philippine Islands or of the city of Manila, ever impeded you from keeping your books of account in Chinese?

A No, sir.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q This report which you make to the Internal Revenue Bureau, is that made exclusively in Chinese, did you say?

A Entirely in Chinese.

Q This report which you say is made entirely in Chinese, is that a printed form?

A The book is printed, but the dates and the amounts have to be put in.

Q And the amounts are written down in Chinese characters?

A All in Chinese.

Q And the Internal Revenue accepts this report without objection?

A They accept it.

Q You have made this report every year since the year 1918 without variation?

A Yes, sir, since 1918.

Witness excused.

ANG KI, 53 years of age, married, merchant, 15 Calle Estraude, a witness on behalf of the petitioners, upon being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What kind of merchandise do you carry?

A Dry goods.

Q What is the extent of your stock of goods?

A Ordinarily from fourteen to fifteen thousand pesos.

Q What is your nationality?

A Chinese.

Q How long have you lived in the Philippine Islands?

A About thirty three years.

Q How long have you been operating this particular business?

A For about twenty two or twenty three years.

Q Previous to that time, what did you do in the Philippine Islands?

A I was a dry goods pedler.

Q How many employees do you have in your business?

A I have four employees, including myself.

Q Are these three people mere employees, or are they interested in your business?

A They are merely employees.

Q What nationality are these employees?

A Chinese.

Q How long have they been working for you?

A No definite time. Some two or three years. Some of them have gone back to China, and then come back again and entered my service.

Q Do you keep books of account?

A Yes, sir.

Q In what language?

A Chinese.

Q Can you read and write any other language except Chinese?

A No, sir, I haven't learned.

Q Who keeps your books of account?

A The geater part of the time, my employees.

Q Do you take any part in keeping your own books?

A I personally don't know how to keep them.

Q What do you mean by saying that a greater part of the time some employee keeps the books?

A Because I have employees who know bookkeeping, and I order them to keep them.

Q What is approximately the net income from your business in normal times?

A It is not fixed. In good times up to five to six thousand pesos; at times from one to two thousand pesos or more.

Q If your books were kept in English, Spanish, or any other language than Chinese, would you be able to check them up?

A The Chinese characters I know how to read a little, but outside of Chinese I don't know anything.

Q Can you revise and check up your books kept in the Chinese language?

A I can read the dates and the figures and some Chinese characters regarding many of the articles; the others I can not read.

Q How many books of account are kept in your establishment?

A Ledger, daybook and internal revenue day book, the last of which is kept in ordinary characters. The ledger and the day book are kept in Chinese.

Q What is it that your establishment has to set out in the Bureau of Internal Revenue book?

A Figures only.

Q What salary do you pay your Chinese bookkeeper?

A I pay thirty pesos to the bookkeeper, and at the same time he acts as salesman.

Q Would you be able to continue operating your business if you were compelled to keep your books of account in any language other than Chinese?

A I could not.

Q Why not?

A In the first place, I don't know anything outside of Chinese, and I could not know how my books were being kept by someone else who kept them in some language other than Chinese.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the entire testimony of this witness on the ground that even though the

enforcement of Act 2972 were prejudicial to him, he is not a party to this action, and his testimony is therefore completely irrelevant and immaterial.

Q Where is your tienda?

A Yangco market.

Q What number?

A 173.

Q You don't know how to write in Chinese?

A No, sir.

Q You state that you have been in the Philippine Islands about thirty three years?

A About thirty three years.

Q And during these thirty three years, you have passed that in the city of Manila?

A Yes, sir.

Q Dedicating yourself to the sale of dry goods, both as peddler and owner of a drygoods store?

A Yes, sir.

A Since about twenty two or twenty three years I have had an establishment of my own.

Q During the first five years that you were a peddler, you sold from house to house the articles that you had for sale?

A Yes, sir.

Q And these articles were sold to Spanish, Filipinos, and other foreigners than Chinese?

A The larger part of them were Filipinos. Some were Spanish.

Q And you made yourself understood with these customers in Spanish or in Tagalog?

A Almost always in Tagalog. I only understand Spanish when amounts are mentioned.

Q You frequently sold to these customers on credit, didn't you?

A No, sir, always for cash.

Q Never on credit?

A When I was a peddler I always sold for cash.

Q And today, don't you sell on credit?

A Yes, sir, a little, to Chinese.

Q And to Filipinos?

A One or two accounts only.

Q And these Filipino customers sign vales, don't they, for what they owe you?

A It is not exactly a vale, a man who owes me, I say write down the articles and sign it.

Q And the value of the goods?

A Yes, sir.

Q And you accept that?

A Yes, sir.

Q And these vales are written in Spanish or Tagalog, aren't they?

A The larger part of the times in Tagalog. I have them read.

Q Do you mean to say that after thirty three years in the Philippine Islands, in the business you are in, you haven't learned Spanish or Tagalog?

A I can speak a very little, for ordinary business.

Q In a word, you can make yourself understood with your Spanish and Tagalog customers, can't you?

A The words that are used in the business I understand.

Q You can make yourself understood?

A The words used in business, yes, sir.

Q Why did you say that you couldn't continue with your business if you were required to keep your books in

any other language than Chinese, when as a matter of fact you can only read and write a little Chinese?

A Even though I don't read well Chinese, at least I can required to keep your books in any other language I cannot read anything.

Q Is that the only reason you have for saying that you will have to close your business if you should be required to keep your books in any other language than Chinese?

A I could not continue the business.

Q That is the only reason you have?

A The reason is as follows: If I am compelled to keep my books in any language other than Chinese, in case that I should find someone to keep them, if I should order him to make certain entries in the books, and he should make contrary entries, I could not know what he was cutting in there.

Q You know how to read and write arabic figures?

A The numbers only.

Q What do you understand by "ledger"?

A It is a resume of the transactions had with other people. The entries are transferred to that book.

Q You have been various times in the office of the prosecuting attorney haven't you?

A Never.

Q Referring to this salary that you pay to your bookkeeper, you pay him thirty pesos free of board, room, and laundry and other similar expenses, isn't that a fact?

A Yes, sir.

Q You have never been prosecuted or accused of violation of Act 2972, have you?

A No, sir.

Q And no functionary of the government of the Philippine Islands nor of the city of Manila has impeded you from keeping your books in Chinese, have they?

A No, sir.

Q You are married, aren't you?

A I brought my wife to the Philippines.

Q Weren't you married in the Philippine Islands?

A No, sir.

Witness excused.

The hearing at this point was continued until August 7, 1923.

SESSION OF AUGUST 7, 1923.

The above entitled cause came on for a continuation of the hearing on this 7th day of August, 1923, and the following proceedings were had.

The same appearances were noted as at the previous hearing.

LIM TAN, 18 years of age, single, *sari-sari* merchant, 927 Calle Jaboneros, a witness on behalf of the petitioners, after having been duly sworn testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you lived in the Philippine Islands?

A Eight or nine years.

Q How long have you been engaged as a merchant in the business in which you are now operating?

A About four years. Formerly the business was my father's.

Q How large a stock of goods do you carry?
A From seven to eight hundred pesos.
Q Do you keep any employees? If so, how many?
A I have one employee.
Q What is your nationality?
A Chinese.
Q What is the nationality of your employee?
A Chinese also.
Q Do you keep books of account in your mercantile business?
A I have Chinese books. I mean to say, Internal Revenue books in Chinese.
Q Can you read and write Chinese?
A A little.
Q Can you read and write any other language than Chinese?
A No, sir.
Q Who keeps the books of your tienda?
A I do, personally.
Q What wages do you pay your Chinese employee?
A Four hundred and eighty pesos a year.

MR. FELIX: I again raise the question of the exclusion of witnesses.

MR. GIBBS: I object to their exclusion. However, to satisfy the fiscal, I will give them instructions to leave, but I deny the right to exclude them, as they are my clients.

MR. FELIX: I insist that they are not parties plaintiff.

The witnesses in the room then withdrew.

Q Can you state approximately what your annual net profits are?
A A net profit of from five hundred to six hundred pesos a year.

Q This internal revenue book that you keep, is it kept on on a form furnished you by the Internal Revenue bureau?

A Yes, sir, printed in Chinese characters, furnished by the Bureau of Internal Revenue.

Q Are the characters in that internal revenue book in Chinese?

A In Chinese characters.

Q Have you been using that same form of book furnished by the Internal Revenue department ever since you began operating this tienda?

A Yes, sir, always.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of this witness on the ground that even though the enforcement of Act 2972 were prejudicial to him, he is not a party to the present action, and therefore his testimony is entirely immaterial and irrelevant.

Q During these eight or nine years that you have been in the Philippine Islands, you have resided in the City of Manila, isn't that a fact?

A Yes, sir, always in Manila.

Q And during these four years since you have been in charge of the tienda of which you are the owner, as well as during the time when the tienda was under your father's charge, you were an employee in that tienda, and worked in that tienda, isn't that a fact?

A Yes, sir.

Q And in your work in that tienda you had considerable dealings with the customers of the tienda?

A Yes, sir.

Q And the greater part of these customers are Filipinos, isn't that a fact?

A The greater part are Filipinos.

Q And these Filipinos do not understand Chinese?

A They don't know.

Q And in your relations with these Filipinos during this time, you learned to understand Spanish and Tagalog, isn't that a fact?

A A little Tagalog.

Q In a word, you can understand and make yourself understood with the customers of the tienda who do not understand Chinese, isn't that so?

A Yes, sir.

Q The salary which you pay to your employee of four hundred and eighty pesos a year is free of board, room, and washing and other similar expenses?

A Free of board.

Q And room also?

A Yes, sir.

Q And washing?

A Also.

Q You are not a bookkeeper, are you?

A No, sir.

Q And you don't know anything about bookkeeping?

A A little.

Q Where did you study bookkeping?

A In China.

Q In what school?

A In China.

Q In what school in China?

A In the school in my town.

Q Elementary school?

A Yes, sir, primary.

Q In a word, all you learned to do was to write a little in Chinese?

A Yes, sir.

Q And this you call learning bookkeeping?

A My teacher also taught me a little bookkeeping.

Q What do you understand by "bookkeeping"?

A Chinese bookkeeping.

Q What do you understand by "Chinese bookkeeping"?

A For instance, the receipts and disbursements are entered in the books.

Q That is what you sell and what you purchase, and nothing else?

A That is the idea, which I have said. I don't mean to say that it is only that.

Q You present annually an income tax return to the Bureau of Internal Revenue, don't you?

A No, sir, because our business is very small.

Q How much did you sell yesterday in your tienda?

A Thirty one pesos and a little over.

Q That is the average of your daily sales?

A It is not fixed. Sometimes it is over twenty pesos, and some times over thirty one, thirty two pesos.

Q What is the average?

A From twenty to thirty pesos on an average.

Q You have never been prosecuted for violation of Act 2972, have you?

A No, sir.

Q You have never been impeded by any functionary of the government of the Philippine Islands or of the City

Manila from keeping your books in Chinese, have you?

A No, sir.

Q What is the average of profit that you make on your sales?

A Twenty to thirty per cent.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q Do you mean to say that you make a profit of from twenty to thirty percent on the goods sold by you, on all the goods sold by you or only on part of them?

MR. FELIX: Objected to as already answered.

A That is an average. On some goods we don't make so much, but on other goods we make a little more. It is not fixed.

Q You mean to say that that is net profit, after discounting all your living expenses, and those of your employee?

MR. FELIX: Objected to as leading.

A Without deducting the expenses of the tienda.

Q And this discount, does it include your losses on bad debtors?

MR. FELIX: Objected to as leading and based on a supposition not established by the record that this witness sells on credit.

MR. GIBBS: Withdraw the question.

Q Do you make any sales on credit?

A I do not.

Witness excused.

ONG KIAM, 21 years of age, single, sarisari merchant, 921 Calle Lavizares, a witness on behalf of the petitioners, was duly sworn, and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you lived in the Philipine Islands?
A About four or five years.
Q How long have you been operating this store?
A About three or four years.
Q Who operated the tienda before you?
A Ko Hun.
Q How large a stock of goods do you carry?
A From four to five hundred pesos.
Q What is your net annual profit?
A Three hundred to four hundred pesos net profits.
Q Have you any partners or employees in that business?
A I have no partners; I only have an employee.
Q How much do you pay your employee?
A Twenty five peso a month.
Q Do you keep books of account?
A Internal Revenue books.
Q In what language?
A Chinese characters.
Q What is your nationality and that of your employee?
A Chinese.
Q Which one of you keeps the internal revenue book?
A My employee keeps the book.
Q Can you and your employee read and write Chinese?
A I know less than my companion. He knows a little more than I do.
Q Is that Internal Revenue book a book furnished by the Bureau of Internal Revenue?
A Yes, sir, printed by the bureau.
Q Could you or your employee keep this internal revenue book in any other language than Chinese?

MR. FELIX: Objected to on the ground that this witness is not competent to testify as to that.

A No, sir.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of this witness on the ground that even though the enforcement of Act 2972 would be prejudicial to him, he is not a party to this action, and therefore his testimony is completely immaterial and irrelevant.

Q Where is your tienda?

A Lavizares.

Q 931?

A Yes, sir.

Q During the four or five years that you say you have been in the Philippine Islands, this time has been passed in the city of Manila?

A Yes, sir.

Q In that same tienda?

A Yes, sir.

Q And you have been working there during these four or five years, making sales to the public?

A No, sir.

Q And the public that frequents your tienda to make purchases is for the greater part composed of Filipinos?

A Chinese and Filipinos.

Q Answer the question. The greater number are Filipinos?

A The greater number are Chinese. The Filipino customers are only transients.

Q And you make sales to these Filipinos?

A Yes, sir.

Q And these Filipino customers do not speak Chinese?

A They do not; they speak Tagalog.

Q And you understand and make yourself understood with them in Tagalog?

A Yes, sir.

Q You speak Spanish, don't you?

A No, sir.

Q Not even a little?

A No sir.

Q Referring to the net profits which you say you make yearly, this profit is after deducting the expenses of the establishment as well as your support and maintenance, isn't that a fact?

A Yes, sir.

Q This salary which you pay to your employee of twenty five pesos a month, is free of room, board, and laundry, and other similar expenses?

A No, sir.

Q You only know how to read and write a little, a very little, in Chinese?

A I have no profound knowledge.

Q A very little?

A A very little.

Q You have never been prosecuted or accused of violation of Act 2972, have you?

MR. GIBBS: Admitted.

Q And no functionary of the government of the Philippine Islands or of the city of Manila has ever impeded you from keeping your internal revenue book in Chinese?

A No, sir.

Q And that is the only book you keep in your tienda?

A Yes, sir.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q This internal revenue book which you keep, does that contain your daily sales?

A Yes, sir, and that book carries Chinese characters already printed.

Q And in that book you record daily sales?

A Yes, sir.

RE-CROSS EXAMINATION BY

MR. FELIX:

Q What you put in that book is the total of your daily sales?

A Yes, sir.

Witness excused.

CO SI GAM, 25 years of age, married, of a tobacco shop and grocery store, 1045 Aceiteros, a witness on behalf of the petitioners, after having been sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What is your nationality?

A Chinese.

Q Do you own the store which you are operating?

A It is not mine.

Q Whom does it belong to?

A Lim Tingco.

Q What position do you occupy in the store?

A I am the manager.

Q How large a stock do you carry?

A It amounts to about ten thousand pesos.
Q How long have you been managing that business?
A About one or two years.
Q How many employees do you have?
A Four or five.
Q What is their nationality?
A All are Chinese.
Q Do you read and write Chinese?
A A little.
Q Do you read or write any other language?
A No, sir.
Q Do you keep books of account in that establishment?
A Yes, sir, Chinese books.
Q How many books do you keep?
A Four or five books.
Q What books are they?
A Ledger, daybook, sales book, book of miscellaneous expenses.
Q Who keeps your books?
A Under my supervision they are kept.
Q Who helps you keep them?
A I do.
Q You keep the books yourself?
A Yes, sir, personally.
Q Are you able to keep your books in any other language than in Chinese?
A No, sir.
Q Would you be able to revise or check up your books in any other language?
A I don't know anything else; how could I revise them?
Q Do you keep an internal revenue book?
A Yes, sir, in Chinese characters.

Q Does that internal revenue book contain a record of your daily sales, or only of your monthly sales?

A Daily entries are made.

Q And this internal revenue book is furnished by the Internal Revenue Bureau?

A We purchase it and have them certify to it.

Q And does it contain printed characters in Chinese or not?

A Yes, sir, printed, and we take it to the Bureau of Internal Revenue for their signature.

Q Does the owner of the store take any part in its management or operation?

A He does not interfere.

Q Is the ower of the store a Chinaman?

A Yes, sir, a Chinaman.

Q Do you know whether he can read or write in any other language than Chinese?

MR. FELIX: Objected to on the ground that this witness is not competent to answer as to that.

A He does not know.

Q Would you be able to continue running this business if you were compelled to keep your books of account in any language other than Chinese?

A It would be impossible for me, because in the first place I don't know anything but Chinese.

Q What is the approximate net annual profit of that business?

A Two or three thousand pesos.

Q Have your books been examined from time to time by the Bureau of Internal Revenue?

A Yes, sir.

Q Have there been any complaints as to any irregularities in those books?

A Never.

Q Have you always paid all of the sums due to the Bureau of Internal Revenue as sales tax and income tax?

A We have always regularly paid them.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though the enforcement of Act 2972 would be prejudicial to him, he is not a party to this action, and his testimony would be therefore immaterial and incompetent.

Q Before you became manager of that tienda at 1045 Aceiteros, you were in the Philippine Islands, isn't that a fact?

A Yes, sir.

Q How long have you been in the Philippine Islands?

A Seven or eight years.

Q All of this time you have spent in the City of Manila?

A I went back to China.

Q How long were you absent from the City of Manila

A More than a year.

Q How much more than a year

A More than ten months.

Q More than a year?

A Less than a year.

Q In a word, you were absent less than a year, isn't that a fact?

A More than ten months; it didn't amount to as much as a year.

Q During the time you were employed as an employee

of that tienda, you have had to deal with the public, isn't that a fact?

A Yes, sir.

Q And the greater part of the customers of that tienda are Filipinos, isn't that a fact?

A Chinese and Filipinos.

Q The greater part are Filipinos?

A About the same.

Q And the Filipino customers don't speak Chinese or understand it?

A With the Filipinos I make myself understood in Tagalog and by signs, and I could not make myself well understood with them.

Q Don't you speak Tagalog on account of your having been here for so many years?

A Very little.

Q You sell on credit, don't you?

A No, sir.

Q You have stated that your books of account have been inspected by the internal revenue agents. How many times have they been inspected since you have been in the business?

A I do not now remember the exact number of times. I remember they were inspected several times.

Q That would be two or three times?

A Seven or eight times.

Q And in these times in which the books were inspected, the inspection lasted only ten or fifteen minutes, and sometimes less? Isn't that a fact?

A More than ten minutes.

Q More or less how long?

A It is not fixed. Sometimes they revised them more quickly, while others delayed.

Q How much time was occupied by the inspector who took the longest time to inspect your books?

A Some spent as much as a half hour, others more than ten minutes.

Q And those who inspected your books were Filipinos, isn't that a fact?

A Yes, sir, Filipinos.

Q This net profit to which you have referred in your testimony is after deducting your maintenance and subsistence as well as the maintenance and subsistence of all of your personnel, isn't that a fact?

A Yes, sir.

Q You are not a bookkeeper, are you?

A I keep the books.

Q Answer the question. I insist upon it. You are not a bookkeeper?

A I keep the books.

Q You have never studied bookkeeping?

A I know a little of bookkeeping before I can keep the books.

Q Where did you study this little that you speak of?

A In China.

Q In what school?

A In the school in Chuan Chu.

Q In an elementary school?

A High school. (Escuela superior).

Q How many years did you have to study in order to arrive at this "clase superior"?

A To arrive at the high school, six or seven years.

Q Your knowledge of bookkeeping consists only in know-

ing how to write Chinese characters and Chinese numbers?

MR. GIBBS: Objected to as unintelligible.

A I know how to keep the books in accordance with Chinese accounting. Outside of that I don't know anything more.

Q You have never been prosecuted for violation of Act 2972, have you?

MR. GIBBS: Admitted.

Q Nor have you been impeded by any functionary of the government of the Philippine Islands or of the City of Manila, or any government authority, from keeping your books in Chinese?

MR. GIBBS: Objected to as they have not had the opportunity to object, due to the injunction by this court.

MR. FELIX: I insist, inasmuch as the Collector of Internal Revenue has had more than sufficient time to institute proceedings against the Chinese if he had so desired, and prevented them from keeping their books in Chinese.

MR. GIBBS: I wish it to appear that we are not conforme to that statement, in view of the fact that at the first step taken by the respondent, the Collector of Internal Revenue, we obtained a preliminary injunction against him.

MR. FELIX: At the same time I wish it to appear of record that this law went into effect the first of January, of this year, and this injunction was entered during the month of March, 1923, only.

MR. GIBBS: This was due to negotiations to suppress the law.

MR. FELIX: Object to this, as this does not appear of record. If Mr. Gibbs wishes to have that appear, he must testify as a witness.

MR. LA'O: Have it appear of record that the Collector of Internal Revenue is the only one who can present charges, as in all of the Philippine Islands attempts have been made to prosecute the Chinese, and the Collector of Internal Revenue, in view of the injunction, has had to send telegrams to all of his subordinates, ordering them to comply with such injunction.

MR. FELIX: Objected to, as that is a question of fact.

MR. LA'O: Which will be proven later.

A No one has impeded me.

MR. GIBBS: In order to prevent the record being filled with these questions, so many times repeated, in regard to the prosecution of the witnesses and the impediments placed against their carrying or keeping their books in Chinese characters, we wish to have it appear that so far as we know, one of the witnesses which we will call have been prosecuted nor molested by the agents of the Internal Revenue in relation to Act 2972, but we insist at the same time that the reason for this has been the preliminary injunction which we secured.

Q The goods which you sell in your store, do you purchase them locally, or import them?

A We purchase them here.

Q From concerns like the Pacific Commercial Company and other large concerns?

A From the Pacific Commercial Company and other firms.

Q And when you purchase goods from the Pacific Commercial Company and other large concerns, you make out a requisition, don't you?

A The salesmen come to the tienda and take the order.

Q You place the order in writing, don't you?

A We don't know how to write.

Q Don't you sign any paper when you place the orders?

A I sign it any way.

Q Do you mean to say that you sign without knowing what is in it?

A We put our stamp (chop).

Q And you put your chop without knowing the contents of the document?

A He always came to the tienda, and I have confidence in him.

Q Answer the question. When you place your chop on these orders, you know the contents of this order, don't you?

A I do not know.

Q Do you mean to say that you place your chop on an order without knowing its contents?

A I know that I have asked for certain goods. I have confidence in him, and I don't know how to read what is in the document.

Q You have never checked up one of these orders to see if what appears there is what you ordered?

A I can read the figures, but the transactions are made for cash, and not on credit.

Q You submit an Income Tax return at the end of each year, showing the profits made during the previous year?

A Yes, sir.

Q Who prepares that for you?

A I order another to make it out.

Q Whom?

A Some Chinese mestizos, those who speak Chinese. I make it in Chinese, and they prepare it.

Q And you sign this return before you submit it?

A It is translated into Chinese.

Q These mestizo Chinese who prepare this declaration, are they connected in any way with your establishment?

A They are not employees of the tienda.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q The goods that you sell, do you know from what country they come?

A Some come from this country; others from America.

Witness excused.

TE LE KIM, 33 years of age, married, merchant, Yangco Market No. 150, a witness for the petitioners, upon being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What kind of goods do you sell?

A Dry goods.

Q How long have you been engaged in this mercantile business?

A Two or three years.

Q How long have you resided in the Philippine Islands?

A More than ten years.

Q What business were you engaged in before you took charge of your present business?

A Also dry goods.

Q Do you own the business establishment that you are operating?

A I am manager.

Q Do you have an interest in the business?

A No, sir, I am the manager only.

Q Who is the owner of the business?

A Te Lim.

Q How old a man is the owner of the business? Why doesn't he run it himself?

A More than twenty years. Because sometimes he goes back to China, sometimes he comes back.

Q Does the owner of the business take any part in its operation or management?

A When he is here, he helps. When he goes to China, of course he does not.

Q What is your nationality and that of the owner of the store?

A Chinese.

Q Can you read and write Chinese?

A Yes, sir.

Q Does the owner read and write Chinese?

A Also.

Q How many employees do you have in that establishment?

A Three, counting myself.

Q What nationality?

A Chinese.

Q Do you keep books of account?

A Yes, sir.

Q In what language?

A Chinese.

Q Do you read or write any language other than Chinese?

A A very little.

Q Do any of your employees read or write any language other than Chinese?

MR. FELIX: Objected to as the witness is incompetent to testify as to that.

A They do not know.

Q And the owner of the store, does he read or write any other language than Chinese?

MR. FELIX: The same objection. The witness is incompetent to testify as to that.

A He does not know.

Q Who keeps the books of the mercantile establishment managed by you?

A I do, personally.

Q Would you be able to keep books in any other language than Chinese?

A No, sir, I could not.

Q Would you be able to revise or check up books in any other language than Chinese?

A No, sir.

Q How large a stock of goods do you carry approximately?

A More than ten thousand pesos worth of stock.

Q What is the approximate net annual profit of the business?

A Between one and two thousand pesos.

Q What books do you keep in that establishment?

A Daybook, ledger, book of receipts and disbursements, sales book.

Q Do you keep an internal revenue sales book?

A Yes, sir.

Q In what language is that kept?
A In the ordinary figures.
Q Is that the quarterly report that is made?
A Yes, sir.
Q And what is set forth in that book are simply the totals of each quarter?
A Yes sir.
Q Your daily sales book, in what language is that kept?
A Chinese.
Q What is it that you keep in Filipino, or ordinary characters?
A It is the internal revenue book, the internal revenue tax book.
Q What do you record in that internal revenue book?
A The totals of the sales.
Q In this internal revenue book that you keep in Filipino or ordinary characters, are there any entries other than the amounts?
A No sir.
Q How many entries are made for each quarter?
A Daily the entries are made.
Q And these daily sales are entered in Chinese characters also?
A In the Chinese sales book the figures are entered in Chinese characters, and the totals are entered in the internal revenue book.
Q Are there any words written in that internal revenue book, or only numbers, figures?
A Only the figures.
Q And from what book do you take these numbers?
A From the "libro de salida".
Q From the sales book in Chinese?

A Yes, sir.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though the enforcement of Act 2972 would be prejudicial to him, as he is not a party to this action his testimony is completely immaterial.

At this point the hearing of the above entitled cause was continued until August 8, 1923.

SESSION OF AUGUST 8, 1923.

The hearing of the above entitled cause was continued on this 8th day of August, 1923, and the following proceedings were had, to wit:

The same appearances were noted as at the previous hearing of the case.

The witness TE LE KIM was recalled to the stand as a witness for the petitioners, and after having been duly cautioned that he was still under oath, testified as follows:

CROSS EXAMINATION BY

MR. FELIX:

Q You have stated that you have been in the Philippine Islands for more than ten years. This entire period has been passed in the City of Manila, isn't that a fact?

A Yes, sir.

Q Before you established this dry goods business in the Yangco Market, you sold goods from house to house, as a peddler, didn't you?

A No, sir.

Q Do you mean to say that these ten years which you have spent in the dry goods business has been passed entirely in the Yangco market?

A I was for some time as an employee.

Q In some other store?

A Yes, sir.

Q In your dry goods store, and in the one in which you worked before, the greater part of the customers were Filipinos, isn't that a fact?

A Yes, sir, the greater part are Filipinos.

Q And these Filipinos did not speak Chinese, did they?

A If they are mestizo Chinese they speak Chinese, but if they are Filipinos they speak Tagalog; they don't speak Chinese.

Q And you made yourself understood with them in Tagalog or some other dialect, isn't that a fact?

A In Tagalog.

Q You sell on credit in your store in the Yangco market?

A Yes, sir.

Q You sell on credit to Filipinos?

A Yes, sir.

Q And when Filipinos purchase from you on credit, they sign the corresponding vales, don't they?

A No, sir.

Q Do you mean to say that you give out goods without their signing any receipts for them?

A For the confidence which we have in them, yes, sir.

Q Testifying yesterday, in answer to a question by Mr. Gibbs as to whether you could read or write other languages than Chinese, you stated that you could write a little. In what language do you write?

A I can read a little. For example, the numbers and the names of the goods I sell.

Q In Spanish and also in Tagalog?

A Only the names that they give to these goods, that come from America.

Q Names in Spanish and in Tagalog, aren't they?

A Some names are in Tagalog, others in Spanish.

Q You don't keep your own books, do you?

A I have books.

Q Do you know bookkeeping?

A Chinese bookkeeping.

Q Where did you learn Chinese bookkeeping?

A In China.

Q In what part of China?

A In my province.

Q In your house, do you mean to say?

A In the school.

Q What courses of bookkeeping did you study?

A Intermediate.

Q What course in the intermediate?

A I was studying for high school.

Q How many years did you study to arrive at that intermediate grade?

A Seven years.

Q The annual net profit which you obtained in your establishment is a profit after deducting the expenses of your maintenance and subsistence as well as that of your employees, isn't that a fact?

A Yes sir.

Witness excused.

LIM HUAN, 24 years of age, married, sari-sari

tienda, 902 Cale Jaboneros, a witness on behalf of the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you been living in the Philippine Islands?
A More than ten years.
Q How long have you been engaged in keeping a store?
A About a year now I have been managing the store.
Q Does the store belong to you?
A No, sir.
Q Whose is it?
A Lim Seng's.
Q How large a stock do you carry?
A Between three hundred and four hundred pesos worth of stock.
Q Have you any employees?
A I have only one.
Q That is in addition to yourself?
A Yes, sir.
Q What wages do you receive for managing the store?
A My salary is thirty pesos.
Q And your employee?
A He gets twenty five.
Q What annual net profit do you derive from that business?
A Discounting the salaries of the employees, I could make from one hundred to two hundred pesos a year.
Q Does the owner of that tienda take any part in its management?
A No, sir.
Q Does he live in Manila?
A He lives in Manila but he has another business.

Q What nationality are you and your employee?

A Chinese.

Q And the owner of the tienda?

A He is a Chinese also.

Q Are any of you able to read or write any other language than Chinese?

MR. FELIX: Objected to as the witness is not competent to answer as to the knowledge of others or the ability of others to read or write other language.

A We don't know foreign languages.

Q Do you keep books of account?

A Yes sir.

Q What books of account do you keep?

A The sari-sari tienda only keeps one book of account which is the internal revenue book, in Chinese.

Q Are the daily sales of your tienda recorded in that book?

MR. FELIX: I hereby give notice to the attorneys for the petitioners that I will ask that the witnesses who testify regarding their books of account shall bring their books, with them, because of the fact that the books themselves are the best evidence.

MR. GIBBS: We serve notice on the respondents that we will ask that the respondents present the books of the Internal Revenue Bureau also.

MR. FELIX: All that we can present in accordance with law we will present.

A Yes, sir.

Q Do you keep the books of account of that tienda, or does your employee keep them?

A I personally.

Q Could you or the employees or the owner of the store

be able to keep the books of account of the tienda in any other language than Chinese?

MR. FELIX: The same objection. The witness is not competent to answer.

A We could not.

CROSS EXAMINATION BY

MR. FELIX:

Q Where is this internal revenue book which you keep?

A In our tienda.

MR. FELIX: I ask that the clerk ask the witness to bring here the internal revenue books regarding which he has testified here this afternoon.

MR. GIBBS: I have no objection to exhibiting it, but it is a book of account of the establishment, and he has no right to present it here as evidence, as it is his duty to keep it for the Internal Revenue. The book belongs to the Government.

MR. FELIX: I could state that it is a rule of law that a witness cannot testify as to what is in the books of account without presenting the books. Furthermore, the books of account which are to be used as evidence must carry the certification of the justice of the peace. I wish to prove certain facts in connection with the books. I now move to strike the testimony of the witness on the ground that even though the enforcement of Act 2972 would be prejudicial to him, as he is not a party to this action his testimony is completely immaterial and irrelevant.

Q You have stated that you have been more than ten years in the Philippine Islands; during all this time that

you have been in the Islands, you have spent it in the City of Manila, is that not a fact?

A Yes, sir.

Q And in this *sari-sari* tienda business in which you are employed, the customers in the great majority of instances, are Filipinos, isn't that so?

A A few Chinese, and Filipinos.

Q The greater majority are Filipinos?

A The majority are Filipinos.

Q Filipinos who do not speak Chinese?

A The Filipinos do not speak Chinese, but I have learned a little Tagalog of the tiendas.

Q In a word, in your business you can understand and make yourself understood with customers who do not speak Chinese, isn't that a fact?

A A little, in the purchases and sales.

Q This salary of thirty pesos is free of room and board and laundry, isn't that a fact?

A I live in the house itself; the food is furnished by the owner.

Q You mean that your salary is free of board and room and laundry?

A Yes, sir.

Q Have you a wife in the Philippine Islands?

A No, sir.

Q This salary of twenty five pesos which is earned by your companion is also free of board and room and washing?

A Yes, sir.

Q How much did you sell yesterday in the tienda?

A Yesterday, as in the sari sari tiendas, the internal revenue tax is not paid on cigarettes and liquors, due to the bad weather I only sold eight or nine pesos worth.

Q And when the weather is normal, how much do you sell?

A Outside of the cigarettes and liquors I can sell more than ten pesos.

Q And including the cigarettes and liquors?

A Seventeen, eighteen, twenty pesos.

Q In addition to the ten pesos?

A Yes, sir.

MR. GIBBS: That isn't so and you know it. (To interpreter). You have misled the witness. The witness answered clearly. I don't care whether it was eighteen or thirty pesos, but he didn't make any such answer as that at all. I wish it to appear in the record that apparently the witness has not understood the last question, because he had already answered previously that the eighteen pesos up to twenty pesos included everything.

MR. FELIX: And I wish it to appear that the attorney has no right at this moment to testify, nor to state what the witness intended to say.

MR. GIBBS: I object to the fiscal in his capacity as a public officer, attempting to mislead the witness.

MR. FELIX: I wish to have it appear that Mr. Gibbs is not authorized to be the judge of my actions, for which I myself am responsible.

Q What is your percentage of profit on each sale you make?

A On an average, twenty percent.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q Does this eighteen to twenty pesos include all of your sales or not?

A The total sales.

Q And does this twenty percent profit include the expenses which you have to pay for your own maintenance and that of your employee?

A This is a profit from which the expenses must be deducted.

Q In other words, you sell your goods on an average of twenty percent above what you pay for them, and that twenty percent has to cover the expenses and profit?

A No, sir.

Witness excused.

YAN KIN, 17 years of age, single, *sari-sari* tienda merchant, 921 San Nicolas, a witness for the petitioners, was duly sworn and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you lived in the Philippine Islands?

A Four or five years.

Q How long have you been running this tienda?

A Not very long.

Q Are you the owner of the tienda?

A No, sir.

Q Who owns it?

A Ngam Pe.

Q How much stock do you carry?

A Four hundred to five hundred pesos.

Q What position do you occupy in this tienda?

A Employee.

Q Is there any other employee in the same store?

A Yes, sir.

Q How many?

A One.
Q So two of you run the store?
A I manage it.
Q Do you keep books of account?
A Yes, sir.
Q What books of account do you keep?
A Internal Revenue books in Chinese.
Q Do you keep a book of purchases made by your store?
A Yes, sir.
Q In what book do you keep these purchases? When you buy goods or bring them into the tienda, do you keep any memorandum or account of these purchases?
A Yes, sir.
Q What kind of a book do you keep that data in?
A I have a little book which serves as a memorandum.
Q In what characters do you keep that book?
A Chinese characters.
Q Can you read and write Chinese?
A A little.
Q Can you read or write any other language?
A No, sir.
Q What is the annual net profit of the tienda which you manage?
A More than one hundred pesos.
Q That is after discounting the maintenance of yourself and the other employee?
A Yes, sir.
Q What salary do you receive?
A Twenty pesos.
Q And the other employee?
A Twenty pesos also.
Q How long have you boys been working in the store?

A More than a year.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though the enforcement of Act 2972 would be prejudicial to him, he is not a party to this action, and therefore his testimony is completely immaterial and irrelevant.

Q These four or five years which you have been in the Philippine Islands have been passed in the City of Manila?

A I came, but afterwards I went back to China.

Q How long were you absent?

A I was two years in China.

Q How long were you in Manila the first time you were here?

A The first time I was here about two years in the Philippines; afterwards I went back to years to China.

Q Then you came back to the Philippines?

A Yes, sir.

Q You have not returned to China more than once?

A No, sir.

Q Since you arrived in Manila the second time, how long have you been here, up to now?

A About a year.

Q During the time that you have been in the Philippine Islands you have devoted yourself to this business of *sari-sari* tienda keeper?

A Yes, sir.

Q And in this *sari sari* business, the greater part of your customers are Filipinos?

A The greater part of our customers are Filipinos.

Q Who do not speak Chinese?

A They do not know.

Q And you understand and make yourself understood with these customers by means of Tagalog, isn't that a fact?

A Yes, sir.

Q This salary of twenty pesos which you receive is free of board and room and washing isn't it?

A Yes, sir.

Q And the same as to your companion who also makes twenty pesos, free of board, room, and laundry?

A Yes, sir.

Q How much did you sell yesterday?

A Due to the bad weather, only six or seven pesos.

Q In normal times how much do you sell?

A More than ten pesos.

Q How much more?

A From ten to eleven pesos.

Q Do you also sell cigarettes and liquors in your tienda?

A Yes, sir.

Q And this sale of ten to eleven pesos which you mention, is the sale of cigarettes and liquors included in that?

A Yes, sir.

Q What is the percentage of profit which you add on your goods when you sell them?

A Fifteen percent.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q At what hour do you open up in the morning, and at what hour do you close your tienda?

A From six to seven in the morning, and I close at eleven at night.

Q Do you know any other Tagalog words or Spanish words than the names of the goods you sell?

MR. FELIX: Objected to as leading, and as already answered in cross examination.

A I do not.

Witness excused.

TAN GI HONG, 50 years of age, married, stallkeeper, Yangco market, dry goods stall, a witness for the petitioners, upon being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you lived in the Philippine Islands?

A About thirty years now.

Q How long have you been engaged in mercantile business?

A Several years only, because formerly I was an employee.

Q In what kind of business were you employed previous to becoming a merchant for yourself?

A Dry goods.

Q Do you own this business that you operate in the Yangco market now?

A Yes, sir.

Q How large a stock do you carry?

A About three thousand pesos.

Q What are your annual net profits, approximately?

A Now I will probably lose, because of the bad times, but before I could make from five hundred to six hundred pesos a year.

Q To what bad times do you refer?

A During the last year and this year there have been bad times; we don't sell more than ten pesos a day.

Q How many employees have you?

A One employee.

Q What is your nationality and that of your employee?

A Chinese.

Q Can you read and write Chinese?

A A little because from my childhood I studied.

Q Do you keep books of account in your establishment?

A Yes, sir.

Q In what language are they kept?

A In Chinese characters.

Q Do you yourself keep the books, or are they kept by your employee?

A I personally keep them.

Q Can you keep books or check up books kept in any other language than Chinese?

A No, sir, because I have not learned.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though Act 2972 were prejudicial to him, he is not a party to this action, and his testimony is therefore completely immaterial and irrelevant.

Q These thirty years that you have lived in the Philippine Islands have been passed in the City of Manila, haven't they?

A Yes, sir.

Q And due to your long stay in the Philippines you speak Tagalog as well as Spanish, isn't that a fact?

A The Tagalog of the tiendas.

Q Before owning these stalls in the Yangco market, you were a peddler of drygoods, weren't you?

A No, sir.

Q How many stalls do you have in the Yangco market?

A One only.

Q Have you another establishment in some other place?

A No, sir.

Q You have testified on direct examination that you keep books in Chinese. What books are these?

A Daybook, ledger, and book of purchases.

Q Did you present an income tax return last year?

A No, sir, because my business is on a small scale only.

Q Do you sell on credit?

A No, sir, with such a small capital I cannot sell on credit.

Q How much did you sell yesterday in the tienda?

A Approximately twenty pesos.

Q How much do you sell on an average on days when it is not raining?

A Some days seventy pesos, others fifty, others thirty. The average is more than thirty.

Q What percentage of profit do you add on to the cost of the goods?

A If the goods are fancies, I sell them at ten percent, but if you refer to the staples, four to five percent, but if these goods are goods that have gone out of style, I sell them at a loss even.

Q Having such a small stock in your establishment, do you allow your goods to get out of style?

A For example, a design in dress goods after two months the style has gone.

Witness excused.

UY BOC PUN, 34 years of age, married, merchant, 744 Calle Tabora, a witness for the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What is your nationality?

A Chinese.

Q What kind of mercantile business are you engaged in?

A Dry goods.

Q What is the value of the stock of goods you carry, approximately?

A Five to six thousand pesos.

Q How many employees do you engage?

A Three employees.

Q Do you keep books of account?

A Yes, sir.

Q Do you own the store?

A It is not mine.

Q To whom does it belong?

A Hao Hoc.

Q Is he a Chinese also?

A Yes, sir.

Q These employees, what is their nationality?

A Chinese.

Q Can you read or write any other language than Chinese?

A No, sir.

Q Can your employees read or write any language other than Chinese?

A No, sir.

Q How much salary do you receive, and what salary do your employees receive?

A I receive seventy pesos as salary.

Q How much do your employees get?

A There are some at twenty, others at twenty five.

Q Who keeps the books of your establishment?

A I keep them.

Q In what language?

A In Chinese.

Q What annual net profit does the store make?

A In good times the business makes more than one thousand pesos but in bad times, as during the last year, the business lost money.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though the enforcement of Act 2972 were prejudicial to him, he is not a party to this action, and his testimony is therefore entirely immaterial and irrelevant.

Q How long have you been in the Philippine Islands?

A Fourteen or fifteen years.

Q And all of this time has been passed in the City of Manila?

A Yes, sir.

Q And in your drygoods store, your customers are, in the majority, Filipinos?

A Yes, sir.

Q And you speak with these customers in Tagalog or Spanish?

A Almost all in Tagalog; very few in Spanish.

Q You speak Spanish and Tagalog fluently?
A I speak the Tagalog of the tiendas a little.
Q Enough to understand and make yourself understood with the customers in Tagalog?
A More or less I can speak to them about the values in money and the amounts.
Q How much did you sell yesterday?
A Thirty five pesos and ten centavos.
Q How much do you ordinarily sell on days that are not rainy?
A On an average from thirty five to fifty pesos.
Q What percentage of profit do you add on to the cost of goods you sell?
A On sales at retail a little less than fifteen percent.
Q And on the sales at wholesale?
A Six to seven percent.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q What books do you keep?
A Ledger and daybook.
Q Do you know enough Tagalog to keep these books in Tagalog instead of Chinese?
A I cannot.

Witness excused.

At this point the hearing of this case was continued until August 14, 1923.

SESSION OF AUGUST 14, 1923.

The above entitled cause came on for a continuation of the hearing on this 14th day of August, 1923, and the following proceedings were had.

The same appearances were noted as at the previous hearing.

SIMEON ONG CHANG, 26 years of age, married, manager of an underwear factory at 118 Plaza Calderon de la Barca, Binondo, a witness for the petitioners, upon being duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How many years have you lived in the Philippine Islands?

A About ten years.

Q How large a stock of goods do you carry in your establishment?

A The stock which I have in the store amounts to about thirty thousand pesos or more.

Q Who is the owner of that establishment?

A Emiliano Uy Y Ju & Co.

Q How long have you been managing that business?

A About three or four years.

Q How many employees have you?

A About five or six.

Q What is your nationality and that of the owners and employees of the establishment?

A In my tienda there are Chinese and meztizo Chinese. I myself am a mestizo Chinese as well as some of the owners of the establishment (cabecillos).

Q Take the owners, what nationality are they?

A The owners in all are seven, six of whom are Chinese and the seventh a mestizo Chinese.

Q And you are a mestizo Chinese?

A Yes, sir.

Q Do you read or write any other language than Chinese?

A I can write Chinese characters and I know a very little of the ordinary characters.

Q Where were you educated?

A In China.

Q Have you had any schooling in any other country than in China?

A I studied here in a night school, but I learned very little.

Q What did you study in this night school?

A I employed a teacher who comes to my tienda, and he gave me lessons; for example, he gave me lessons in "eaton".

Q Do any of the other employees of your establishment read or write any other language except Chinese, as far as you know?

A None of them know the ordinary characters.

Q Do any of the owners of the establishment read or write any other language than Chinese?

A No, sir; if they know anything, they know very little.

Q Do you keep books of account, and if so, in what language?

A In Chinese.

Q What books of account do you keep?

A We have a day book, ledger, book of receipts and disbursements.

Q Have your books been inspected from time to time by the Collector of Internal Revenue?

A Yes, sir.

Q Have the inspectors of the Collector of Internal Revenue ever complained of any under declarations of sales or irregularities in the keeping of your books?

A No, sir.

Q Are you the bookkeeper of the establishment, or do some of the other employees keep the books?

A Yes, sir, I am the bookkeeper.

Q Do you understand enough of any other language to keep books of account in any other language than Chinese?

A No, sir.

Q Do you understand enough of any other language to enable you to check books or understand books of account kept in any other language than Chinese?

A No, sir.

Q Would you be able to continue the operation of that business if Act 2972 were in force?

A No, sir.

Q Do you know of any unemployed competent bookkeeper whom you could employ to keep books in a language other than Chinese if Act 2972 were in force?

MR. FELIX: Objected to as immaterial.

A By looking I could find one, but it would be useless, because even if he knew how to make the entries in the books, I could not check them, because I do not understand the entries.

Q How do you know you could find a competent unemployed bookkeeper?

MR. FELIX: Objected to as an attempt to impugn his own witness.

A I could find this in case the names of those who have graduated from the school of accountability should be published.

Q You are the manager and the bookkeeper at the same time?

A Yes, sir.

Q What salary do you receive?

A I receive from four hundred to five hundred pesos a year, And in addition they give me an extra remuneration at the end of the year in case the business makes money.

Q What are the net profits per year, in normal times, in your business?

A I cannot state positively, because for example, during these last years, the business only made a little money.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though the provisions of Act 2972 are prejudicial to him, his testimony is immaterial for the reason that he is not a party to the present action before this court.

Q Your mother is a Filipina?

A Yes, sir.

Q Is she still living?

A She is dead.

Q When did she die?

A About four or five years ago.

Q Your were born in the Philippine Islands?

A No, sir.

Q Where are your books of account?

A They are in my establishment.

MR. FELIX: I ask the clerk to order the witness to produce his books.

MR. GIBBS: I believe that in an establishment of that kind it would not be possible to bring his books. I don't think there is any necessity for so doing. In view of the fact that the fiscal insists that all of these

witnesses bring their books of account before the Commissioner for the purpose of exhibiting them I wish to know what motive he has before I will agree to this requirement on the part of the fiscal.

MR. FELIX: In the first place, I only ask those witnesses to bring their books who have testified in regard to their books of account. I do not ask all of the witnesses to bring them, but only those who have testified regarding their books of account. As regards the petition on the part of the attorneys for the petitioners for our motive, this representation sees no reason to state in advance what their motive is. If the witnesses who appear for the petitioners testify in regard to their books of account, this representation has the right to cross examine them regarding these books, and that is the reason we want them.

MR. GIBBS: We wish it to ppear of record that the only questions regarding the books of account are in regard to the number, the kind, and the language in which they are kept, and this gives no reason for a demand for their production as a basis for cross examination.

MR. FELIX: In addition to this, there are other questions asked regarding their accounting, but I insist that if the witnesses testify regarding their books, they must produce the books.

MR. GIBBS: Do you expect to endeavor to obtain from the books of account which should be presented by any of our witnesses, the net profits shown by the books kept in Chinese?

MR. FELIX: The question to be determined here is

not what this representation intends to prove by the witnessses, but whether or not we have the right to demand the production of the books, and I believe that we have and I insist upon their production.

MR. GIBBS: I object to the exhibition of the books for the reason that the Collector of Internal Revenue has in his office all of the data referring to the net profits of the Chinese merchants, and it is much easier to obtain this information from the records than from the books of the Chinese witnesses. And on the further ground, which is the principal objection to exhibiting these books, of the prejudice and molestation caused to the witnesses and the unnnecessary time which will be consumed in examining these books.

MR. FELIX: It would appear that certain of the statements of the attorney do not coincide with the facts, in that what appears in the Internal Revenue office is what the Chinese want to state to the Collector. However, I see no reason to continue this discussion, and I insist upon the production of the books.

MR. GIBBS: I reply further that we are under no obligation to submit our books to the ordinary inspection of the respondent Collector of Internal Revenue during this trial; that our books of acount are always at the disposition and subject to the inspection of the respondent Collector of Internal Revenue, in accordance with the Internal Revenue law, and this trial is no place to carry out such an inspection.

COMMISIONER: I will submit this to the court and obtain their ruling.

MR. FELIX: Aside from what has already been stated, the facts regarding which these Chinese witnesses have testified not only refer to the language in which the books are kept, but to the contents of the same, as for example, the profits and the payment of the employees, and the amount of excess of the selling price over the cost of goods sold, which also is taken from the books of account.

MR. GIBBS: In reference to the last statement of the Fiscal, we wish it to appear that no witness has testified regarding the contents of the books, but only regarding the language in which the books are kept; that the salary which is paid to the personnel is not necessarily a part of the contents of the books, and it is a fact which can be established independently of the books. The mere fact that the salaries are entered in the books is no reason why the salaries can not be proven independently of the books. All of the witnesses have been either managers or owners of their businesses, and know the facts of their own knowledge. With reference to the profits of the establishments, we repeat that the respondent Collector has the evidence of these profits at his disposal in his own office.

At this point the hearing was suspened pending a ruling by the Court on the point at issue.

SESSION OF AUGUST 16, 1923.

The above entitled cause came on for a continuation of the hearings on this 16th day of August, 1923, and the following proceedings were had, to wit:

The same appearances were had as at the previous hearing.

The Commissioner announced: "The parties were notified this morning by the Clerk of the Supreme Court that the motion of the Fiscal asking for the production or exhibition of the books of account of the witnesses who testify regarding their books of account has been denied by the Court."

The witness SIMEON ONG CHANG was then recalled to the stand for further examination, and after having been reminded that he was still under oath, testified as follows:

CROSS EXAMINATION (Continued) BY

MR. FELIX:

Q You stated here the other day, testifying as a witness, that the agents of the Bureau of Internal Revenue inspected the books of account of the establishment of which you are the manager. Now, it is a fact, is it not, that these agents went to your place of business only two or three times, isn't that a fact?

A The times that they came to inspect my books I cannot say. It was three or four years ago.

Q So it has been three or four years since the agents of the Bureau of Internal Revenue went to inspect your books?

A Since I have had the managership of that establishment, I have seen the inspectors there, but I can not remember the number of times that they were there.

Q More or less?

A Three or four times.

Q And during these three or four years in which you have been the manager?

A I can not remember the number of times. Now, in order to be certain, in the books there appears the names of the inspectors who went there from time to time.

Q And these inspectors were Filipinos, isn't that a fact?

A Yes, sir.

Q And the revision or examination which they made was limited to the Chinese books?

A The last time that the agents came there to examine the books, they checked them, compared them.

Q These Filipino agents?

A Yes, sir.

Q And these Filipino agents or inspectors who went to inspect your books did not speak Chinese, did they?

MR. GIBBS: Admitted.

A It is true they cannot read Chinese, but they can read numbers.

Q Numbers that are written in Arabic figures?

A Figures written in Chinese and in Arabic also.

Q Can you indicate any one of the Filipino agents who can read figures in Chinese, any one of the internal revenue agents who went to inspect your books?

A I cannot indicate them, because when I saw them there I didn't ask them where they lived or where they could be found.

Q And these inspections which were made by the agents only lasted a matter of ten or fifteen minutes at a time, isn't that a fact?

A Yes, sir, around that.

Q And in this time they inspected your books of account

composed of a day book, ledger, and book showing receipts and disbursements?

A They cast a glance at the Chinese books, but they examined more closely the internal revenue book.

Q And the Internal Revenue book is written in Filipino characters, or Arabic characters?

A It is written in Chinese characters.

Q You stated that you had studied in the Philippine Islands. In what schools?

A I did not go to school to learn, but I employed a teacher who came to my house to give me lessons.

Q For how long a time was he teaching you?

A For some months only.

Q How many?

A The teacher who gave me lessons in Spanish was teaching me for about six or seven months.

Q This other Chinese mestizo who works in your tienda also speaks Tagalog and Spanish, isn't that a fact?

MR. GIBBS: Objected to as based on a false premise, in making use of the word "also", it not appearing that the witness himself speaks Spanish and Tagalog.

MR. FELIX: Object to the form of the objection, as it instructs the witness.

A He speaks a little, enough to sustain a conversation on the purchases and daily transactions.

Q You stated that your salary was from four hundred to five hundred pesos a year. This salary is free of board, room, clothes, and washing, isn't that a fact?

A Yes, sir.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q What time do you open and close your business establishments?

A I open my establishment at seven o'clock in the morning, and close it at ten o'clock at night.

Q How many employees did you say you had?

A Five or six.

Q Can you state approximately what is costs yourself and your five employees to live per month, including food and laundry?

MR. FELIX: Objected to as lacking proper foundation.

A About from eighty to one hundred pesos.

Q Eighty to one hundred pesos for seven persons?

A Yes, sir.

RE-CROSS EXAMINATION BY

Q And you are the one who pays the expenses for the maintenance of your employees, are you not?

A Yes, sir.

Q And you make entries covering it in your books of account?

A Yes sir, all the expenses that are incurred for their maintenance I enter in the books, in the daybook especially.

Witness excused.

CU PIENG, 33 years of age, married, merchant, 289 Juan Luna, a witness on behalf of the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What is your nationality?
A Chinese.
Q How long have you lived in the Philippine Islands?
A Fifteen years.
Q What kind of merchandise do you handle?
A Hat store.
Q How many employees have you?
A Seven or eight.
Q What nationality?
A All are Chinese.
Q How large a stock of goods do you carry?
A Fourteen to fifteen thousand pesos.
Q About what are your annual net profits in normal times?
A From three to four thousand pesos.
Q Do you keep books of account?
A Yes, sir.
Q What language are they kept in?
A Chinese.
Q Who is the owner of that establishment in which you work?
A I am the owner.
Q How many bookkeepers have you?
A I am the bookkeeper.
Q Can you read or write any language other than Chinese?
A No, sir.
Q What books of account do you keep?
A Daybook, ledger, and Internal Revenue book.
Q Would you be able to keep your books of account in English, Spanish, or any local dialect?

A No, sir.

Q Do you know enough of any of those languages to enable you to intelligently check up or understand books of account kept in any of these languages?

MR. FELIX: Objected to as calling for the opinion of the witness.

A No, sir, as I do not know the ordinary characters, how could I revise them.

Q If you were compelled to comply with Act 2972, would you be able to continue operating your business?

MR. FELIX: Objected to on the same ground, that it calls for the opinion or conclusion of the witness.

A Not knowing how to write ordinary characters and how to keep books in dialect, I could not continue.

Q Do you and your employees all live in the building where you do business?

A Yes, sir.

Q At what hour do you open and at what hour do you close your establishment?

A We open at seven o'clock in the morning and close at ten o'clock at night.

Q What salaries do you pay your employees?

A They are not the same. Some know a little more than the others and receive a little more. Those that know less receive less. I calculate that the average of them is about thirty pesos a month.

Q How many employees have you at the present time?

A Seven.

Q What does it cost you a month to furnish food and washing to those seven employees approximately?

A About eighty pesos. I calculate that each of them con-

sumes ten pesos for their food, and for their washing very little, about one peso.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the entire testimony of the witness, on the ground that even though the enforcement of Act 2972 would be prejudicial to him, he is not a party to this action, and his testimony is therefore immaterial and irrelevant.

Q These fifteen years that you say you have lived in the Philippine Islands have been passed in the City of Manila, isn't that a fact?

A I wasn't here all the time. From time to time I went back to China.

Q How much of this time was spent in China?

A I returned to China three times, and I believe I spent about two years or more.

Q So that you have been for thirteen years in the Philippine Islands?

A Yes, sir.

Q And these thirteen years have been passed in the City of Manila, isn't that a fact?

A Yes, sir.

Q Devoted entirely to the hat business?

A Yes, sir.

Q The greater part of your customers are Filipinos, isn't that a fact?

A No sir, the greater part of them are Chinese from the provinces, and sometimes we sell on a small scale at retail to the Filipinos.

Q So that your customers who purchase hats at retail are Filipinos, isn't that a fact?

A We sell at retail to Filipinos as well as to Chinese.

Q You wait on the Filipino customers who make purchases in your tienda, isn't that a fact?

A Yes, sir.

A Yes, sir, if they purchase from me, I have to wait on them.

Q And these Filipinos who purchase hats from you at retail don't speak Chinese, do they?

A They don't know, but when they want to purchase a hat they indicate the kind of hat that they want, and I show it to them.

Q And you understand and make yourself understood with with them in Spanish or Tagalog depending on the individual making the purchase, isn't that a fact?

A Yes, sir, the words that are used in the ordinary commercial transaction I know; a very few words.

Q Does the value of the stock of goods which you have appear in your books?

A The Chinese names of the goods appear in the books, in the book in which appear the receipts and disbursements.

Q Answer the question. The value of your stock of goods appears in your books, isn't that a fact?

A Yes, sir.

Q And when you testified that the value of your stock was from fourteen to fifteen thousand pesos, you have taken that from your books, isn't that a fact?

A I referred to the capital invested, which amounts to fourteen or fifteen thousand pesos, but the value of the stock amounts to only about ten thousand pesos.

The capital invested is about fourteen or fifteen thousand pesos.

Q Answer the question. That appears in your books and you got that data from your books?

A We make a balance at the end of the year. Sometimes we have less, sometimes more.

Q Repeat the question. He doesn't understand the question. The value of the goods, which you state is ten thousand pesos, you got that information from your books, isn't that a fact?

A Taken from the books and also from the calculations. Sometimes we purchase more, sometimes less.

Q You submit an income tax return to the Internal Revenue, isn't that a fact?

A Yes, sir, but I make it first in Chinese, and afterwards I take it to another person to reduce it to the ordinary characters.

Q And after this return has been made up in ordinary characters you revise it, isn't that a fact, before you present it to the Bureau of Internal Revenue?

A After it has been translated I consult another person who knows, to find out whether it has been made out properly or not.

Q Have you studied bookkeeping?

A In China I studied it.

Q When did you study it? What year?

A Many years ago. I began to study when I was seven, or eight years old.

Q In what school in China?

A The schools in my town.

Q In what schools?

A In the school in Kim Tong.

Q Is that the only school in which you have studied in China?

A Only in that school.

Q How many years did you study in that school?

A I studied for about eight years.

Q Elementary schooling?

A I studied Chinese and other things also.

Q What other things?

A I studied letter writing; I studied also bookkeeping.

Q In so far as the bookkeping is concerned, isn't it a fact that the only thing you learned was to write the figures, and to add, subtract, multiply, and divide?

A No, sir, the method of keeping books, as for example, the receipts and disbursements.

Q How long did you study bookkeeping?

A I have not studied bookkeeping alone. I studied it in combination with letter writing and other things.

MR. GIBBS: My interpreter says that the witness did not understand the question.

MR. FELIX: The questions whether he has translated the question properly and translated the answer afterward.

Q You sell on credit also, don't you?

A To my Chinese customers, yes.

Q Do you import hats from the outside, or do you purchase them locally?

A Right here in the locality.

Q And when you place orders with these houses from which you purchase, you make these orders in writing, don't you?

A It is not necessary. The greater part are from Chinese importing houses.

Q What houses?

A Many. The firm of Hop Sing, Seng Kee, Sin See, Kian Kee.

Q This salary of thirty pesos which is the average of what you pay your employees, is free of room, board, and washing? Isn't that a fact?

A The food is for the account of the tienda.

Q Answer the question. Is that salary free of washing, room, and board?

A Yes, sir.

Q What do you give your employees to eat?

A Food and basabasa.

Q What do you give them for breakfast?

A In the morning basabasa and "bianda salada".

Q You mean meat?

A Sometimes salt fish.

Q And for lunch?

A Sometimes basabasa and other times rice.

Q What else?

A Soup sometimes.

Q How many different kinds of food at lunch do you give to your employees?

A Two or three.

Q What are they?

A Vegetables sometimes; sometimes "bianda".

Q Meat?

A Yes, sir, occasionally.

Q Sausages?

A No.

Q And for merienda?

A Nothing.

Q And for dinner.

A Basabasa.

Q What else?

A Salted things.

Q What else?

A Salted beans, "tan si" (mongo salado).

Q What else?

A "Tajuri" and vegetables.

Q Do you give them basabasa for breakfast, lunch, and dinner?

A Sometimes "morisquieta".

Q You submit tri-monthly a statement covering your sales to the Bureau of Internal Revenue for tax purposes?

A Yes, sir.

Q And this monthly declaration is written in Spanish, isn't that a fact?

A I write in Chinese and in the Internal Revenue Bureau there is a Chinaman who translates it from Chinese to ordinary characters.

Q And you submit in ordinary characters the tri-monthly statement?

A He prepares it for me first.

Q Answer the question. You submit it in ordinary characters?

A After the Chinaman has translated it I present it and purchase the stamps.

Q And you revise it before you present it, isn't that a fact?

A These are only the figures, and they take out a certain percentage of that for the internal revenue tax.

Q You know the figures in ordinary characters?

A Yes, sir.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q I don't know whether you understood clearly the questions put to you by the fiscal with reference to your study of bookkeeping. Will you please state how long you studied bookkeeping.

A I did not learn bookkeeping continuously. If I had time I learned bookkeeping. The other time that I had I spent in learning other things.

Q Just state how long you studied bookkeeping, whether a month at one time, or two months at another. State how long all together you studied bookkeeping.

A I learned bookkeeping, receiving lessons three or four times a month, because at the same time I had other subjects to learn before learning bookkeeping, as for example, grammar.

Q For how many months or years did you receive three lessons a month in bookkeeping?

A In all I studied Chinese seven or eight years, and in that time I learned bookkeeping and other subjects also.

Q Speaking of the kind of food you give your employees, do you live on the same kind of food and live with your Chinese employees?

A We all eat the same.

Witness excused.

NG GUE YAN, 21 years of age, single, manager of a commercial house, No. 104 Plaza Calderon de la Barca, a witness on behalf of the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What is your nationality?

A Chinese.

Q How many employees do you have?

A I have four.

Q What is their nationality?

A All are Chinese.

Q What kind of merchandise do you handle?

A Hats.

Q About what is the extent of the stock you carry?

A More than ten thousand pesos.

Q Do you sell at retail, wholesale, or both?

A I sell at wholesale and retail and I sell in the tienda.

Q In normal times about what are the annual net profits?

A In normal times, the net profits run from three to five thousand pesos, excluding salaries, because I have only been there a year as manager.

MR. FELIX: Move to strike the answer as it appears that this is apparently hearsay, as he has only been there a year.

Q Do you remember what your turn-over or total sales for the year 1922 were?

A More than one hundred thousand pesos, because the sales ran to over thirty thousand pesos every three months.

Q Did your establishment make any profits in the year 1922?

A There was no profit, because the business was not good, but the profits only covered the salaries.

Q How long have you lived in the Philippine Islands?

A About four or five years.

Q What business or employment were you engaged in previous to becoming the manager of the present business?

A I was formerly an employee.

Q Of what business?

A Employee of the firm Ng Lian Heng.

Q Can you read or write any other language than Chinese?

A I can read Chinese but I don't know how to read ordinary characters.

Q Do you keep books of account?

A Yes, sir.

Q In what language?

A Chinese.

Q Who keeps the books of your establishment?

A I do.

Q What books do you keep?

A Day book, sales book, book of receipts and disbursements, and ledger.

Q Do you keep an internal Revenue book?

A Yes, sir.

Q In what language?

A In Chinese.

Q Can the owner of the establishment speak any language other than Chinese?

MR. FELIX: Objected to as the witness is incompetent to testify as to that.

A He speaks a little enough to carry on a transaction of purchase and sale.

Q Can the owner read or write any other language than Chinese?

MR. FELIX: The same objection. The witness is incompetent to answer.

A He only knows Chinese.

Q What salary do you receive?

A I receive sixty five pesos a month.

Q And the other employees?

A Some receive more than thirty pesos, others more than forty.

Q Do you all live together in the building where you conduct the business?

A Yes, sir.

Q What does your food and washing cost the five of you per month?

A Food, washing, and other expenses, more than one hundred pesos.

Q Would you be able to continue operating that business if you were compelled to keep your books of account in another language than Chinese?

MR. FELIX: Objected to as calling for the conclusion of the witness.

A Not knowing how to write ordinary characters, we could not continue the business.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though the enforcement of Act 2972 would be prejudicial to him, as he is not a party to the present action, his testimony would be completely immaterial and irrelevant.

Q The expenses of your establishment are the rent and what it costs to maintain your employees, isn't that a fact?

A Yes, sir.

Q What over-price do you put on your goods on selling

them? What percentage do you add on when you sell them?

A We make very little. If we have a large stock, we sell a little cheaply.

Q Answer the question. What overprice do you add? What percentage do you add on to your cost?

A There is no fixed amount. Sometimes we add ten percent, and at times five percent over the cost.

Q For last year, that is to say, this year, did you present an income tax return for the last year's sales?

MR. GIBBS: Objected to as based on a false premise. The income tax is not paid on the sales, but only on the profits.

A Yes, sir.

Q Why did you leave the firm of Ng Lian Heng?

MR. GIBBS: Objected to as immaterial.

A Because my previous employer was a relation of mine, and the owner of the store in which I am now is also a relative, and when he went back to China he wanted me to take charge of his business.

Q You make sales in your tienda, don't you?

A Yes, sir.

Q In the retail section of the business?

A Yes, sir, to the customers.

Q And the customers who go to your store are Filipinos, isn't that a fact?

A In the tienda, the greater part of the customers at retail are Filipinos.

Q And you deal with them?

A Yes, sir, the few words that are used in the purchase and sale.

Q You make yourself understood with them in Spanish and Tagalog?

A I do not speak Spanish. I speak a little Tagalog.

Q Who prepared the income tax return which you presented this year for last year?

A I made use of another person.

Q Whom?

A A private agency which devotes itself to the preparation of income tax returns for those who want them to.

Q And you revised and checked over this return before it was submitted isn't that a fact?

A I personally don't know how to read, so I had to consult another person to go over it.

Q This salary which you make of sixty five pesos, as well as that of thirty and forty pesos which is paid to the employees, is free of room, board, and lodging, isn't that a fact?

A Food and logding is paid by the store.

Q As well as room?

A Yes, sir, they all live in the tienda.

Q Do you sell on credit in the tienda to your good customers?

A To the Chinese customers.

Q What was the business of the firm of Ng Lian Heng when you were employed by them?

A Hardware.

Q And you also sold hardware in that store, isn't that a fact?

A No, sir, I assisted in the bodega.

Q Are you a bookkeeper?

A At the present time in my store I am in charge of the books.

Q I didn't ask you if you were in charge of the books. I asked if you were a bookkeeper.

A Yes, sir.

Q Where did you study bookkeeping?

A I learned it in China in a private school.

Q How long did you study?

A I didn't study particularly bookkeeping, but in combination with other subjects, and furthermore, I have had practice in the store.

Q What subjects corresponding to bookkeeping did you study?

MR. GIBBS: Objected to as unintelligible.

A You know that in China they don't study bookkeeping alone, but in combination with other subjects. If you have time you study bookkeeping, and sometimes you went from one store to another to learn how to keep books.

Q How long did you spend going from one store to another learning bookkeeping?

A More than a year.

Q And in these stores to which you went, you confined yourself to watching what they did, and nothing else?

A I went there to assist in the sales, sometimes looking at the method in which the entries were made in the books.

Witness excused.

SIO PUE, 43 years of age, married, merchant, 1470 Calle Herran, a witness on behalf of the petitioners, was duly sworn and testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What is your nationality?

A Chinese.

Q What kind of merchandise do you handle?

A Dry goods.

Q How large a stock of goods do you carry?

A About three thousand pesos.

Q Do you remember what your total sales for the year 1922 were?

A About fourteen or fifteen thousand pesos.

Q How many employees do you have?

A One only.

Q Do you keep books of account? If so, what books?

A Yes, sir, in Chinese, a daybook and a ledger.

Q Who keeps the books of your estalishment?

A I do.

Q Who owns the establishment?

A I do.

Q Can you read or write any other language than Chinese?

A No, sir.

Q What are approximately the net profits of your business per year?

A Sometimes from seven to eight hundred pesos and at times from four to five hundred pesos.

Q What salary do you pay your employee?

A He receives four hundred and forty pesos per year.

Q Do you both live in your store?

A Yes, sir.

Q If you were compelled to keep your books in English,

Spanish, or some local dialect, could you continue in the business?

MR. FELIX: Objected to as calling for the conclusion and opinion of the witness.

A No, sir.

CROSS EXAMINATION BY

MR. FELIX:

Q How many years have you been in the Philippine Islands.

A Twenty four or twenty five years.

Q You were married in the Philippine Islands?

A In China.

Q And these twenty four or twenty five years which you have been in the Philippine Islands have been passed in the City of Manila?

A Yes, sir.

Q And in this drygoods business you not only sell at your store, but you go from house to house to sell goods?

A No, sir; only in the establishment.

Q Your never went from house to house?

A No, sir.

MR. FELIX: I move to strike the testimony of the witness on the ground that even though the enforcement of Act 2972 would be prejudicial to him, as he is not a party to this action, his testimony is entirely immaterial and irrelevant.

Q What percentage of overprice do you put on the goods you sell in your store?

A I put on fourteen to fifteen percent over the cost.

Q What expense are you put to for the rental of your store?

A Seventy pesos.

Q And the expenses which you have are the rental and the

salaries you pay your employees and their maintenance?

A Yes, sir.

Q What do you understand by the word "ledger"?

A By "ledger", I mean to say, there is copied in or entered in the book the expenses that are incurred.

Q That are incurred by whom?

A The expenses for washing, for example, and food, and vehicle expense.

Q You keep an internal revenue book, don't you?

A Yes, sir.

Q And you present an internal revenue tax statement in Spanish, don't you?

A My sales on which I paid tax amount to sometimes three or four thousand pesos.

Q My question is, if you prepare in Spanish the statement of your income for internal revenue tax purposes?

MR. GIBBS: Objected to as it does not appear from the examination of the witness that he pays internal revenue.

A I employ another person to pay that for me.

Q And this tri-monthly statement for internal revenue tax purposes which you present to the Bureau of Internal Revenue Bureau, this statement is prepared in Spanish, or Tagalog? Or in Chinese?

A I prepare it in Chinese characters, and afterwards I employ another person to pay it.

Q Is that translated into some other language or dialect than Chinese?

A I employ that person who is going to pay it for me, and he takes care of that.

Q Answer the question as to whether or not that is translated.

A Translated into what?

Q Translated into Spanish, English, or Tagalog?

A We don't need to translate it.

RE-DIRECT EXAMINATION.

QUESTIONS BY MR. GIBBS:

Q State whether or not there are agents in Manila who make a business of presenting declarations for the purpose of income tax for Chinese merchants who do not understand Spanish, English, or Tagalog?

A Yes, sir.

Q And do these agents assist in the preparation of your sales tax reports?

MR. FELIX: Objected to as leading.

A Yes, sir. We furnish them the data and they put the figures into ordinary characters and present them.

RE-CROSS EXAMINATION BY

MR. FELIX:

Q Did you submit this year an income tax return to the Bureau of Internal Revenue?

A Yes, sir.

Witness excused.

At this point the hearing of the above entitled cause was continued until August 17th, 1923.

SESSION OF AUGUST 17, 1923.

The above entitled cause came on for a continuation of the hearing on this 17th day of August, 1923, and the following proceedings therein were had, to wit:

The same appearances were noted as at the previous hearing.

LIM TING LEE, 24 years of age, married, drygoods merchant, 702 Calle Dart, Paco, a witness for the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How many years have you lived in the Philippines?
A For seven years.
Q Are you a Chinese?
A Yes, sir.
Q Are your parents living?
A Yes, sir, in China.
Q Was your father engaged in business in the Philippine Islands?
A Yes, sir.
Q Where was his business?
A On Calle Tabora.
Q And your grandfather, is he dead?
A Yes, sir, he is dead.
Q Did he live in the Philippine Islands?
A No, sir.
Q Do you remember approximately what your total sales for the year 1922 were?
A I just established my business in January of this year.
Q Who ran this business before?
A Before I was an employee only.
Q Employee of the same business?
A Employee of a drygoods store.
Q Were you an employee of the same business which you now own, or not?

A Yes, sir, I was an employee of the same store.

Q Do you know approximately what the total sales were of that tienda for the year 1922?

MR. FELIX: Objected to on the ground that the witness is not competent and his testimony would not be the best evidence.

A I was not the one who had charge of that last year.

Q How long have you been operating this present business of yours?

A Since January of this year.

Q How large a stock of goods do you carry?

A Five or six thousand pesos.

Q How many employees have you?

A In all I have three besides myself, which makes four.

Q What nationality are they?

A Chinese.

Q Who keeps the books of your establishment?

A I myself.

Q What books of account are kept?

A I keep books in Chinese characters.

Q What particular books of account do you keep in Chinese?

A A daybook and a ledger.

Q Do you keep a bureau of internal revenue sales book?

A Yes, sir.

Q In what language is that kept?

A In ordinary characters.

Q Do you read and write any other language than Chinese?

A I know how to trace figures.

Q Can you read and write, for example a business letter in any language other than Chinese?

A No, sir.

Q What salary do you pay your employees?

A Some ten pesos, others more than twenty.

Q Please state just what you pay each of your three employees.

A One of them receives twelve pesos, another twenty, and the third thirty.

Q Do any of them read or write any language than Chinese?

MR. FELIX: Objected to as the witness is incompetent to testify as to that.

A No, sir.

Q Do you all live together in the store where you do business?

A Yes, sir.

Q What does the food and washing for the four of you cost per month, approximately?

A About thirty pesos.

Q For all or for each one?

A For the four.

Q Have you struck a balance for the first half of the year you have done business, so as to know approximately what your profits are?

A Not yet.

Q Do you know what your total sales for the first six months have been?

A Up to June of this year I calculate them at twelve thousand pesos, more or less.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: Move to strike the testimony of the witness on the ground that even though Act 2972's enforcement would be prejudicial to him, as he is not

a party to this action, his testimony is completely immaterial and irrelevant.

Q These six or seven years that you say you have been in the Philippine Islands have been passed in the City of Manila, isn't that a fact?

A Yes, sir.

Q Working in this same establishment, 702 Calle Dart?

A At first I was on Rosario.

Q As a drygoods merchant you have been selling these drygoods from house to house?

A No, sir.

Q But you have been selling your goods in your tienda to the customers of the store, haven't you?

A Yes, sir.

Q The greater part of your customers, on account of the location of your establishment, are Filipinos, isn't that a fact?

A Yes, sir.

Q Filipinos who do not speak Chinese?

A Some of them know a little, and others no.

Q The greater part of these Filipino customers do not speak Chinese?

A They do not speak Chinese.

Q And you make yourself understood with them in Spanish or Tagalog, don't you?

A In Tagalog.

Q Aside from the salary of twelve, twenty, and thirty pesos which you pay to your employees, respectively, you give them board and room and washing for your account?

A They eat at the establishment, but the cost of their food is deducted from their salary.

Q And the room which they occupy, do they pay for that?

A No, sir.

Q For whose account is their washing?

A That is deducted from the salary.

Q And how much do you deduct from the salary of each for board and washing?

A It is not deducted except at the end of the year, or unless they want to go back to China.

Q How much do you deduct at the end of the year for board and room?

A I don't know yet.

Q Up to this time how much has been spent for board, room, and washing

A Each one of them, or all of them?

Q Each one.

A I calculate it at fifty or sixty pesos.

Q Up to date?

A Yes, sir.

Q And that is from January of this year up to now?

A Up to this date, yes, sir.

Q The value of your stocks appears in your books of account, isn't that a fact?

A The cost of the merchandise purchased appears in the books.

Q And the value of the goods sold, doesn't that appear?

A Yes, sir.

Q What percentage of overprice do you put on the cost of your goods when you sell them?

A Sometimes five percent and at other times ten percent.

Q This internal revenue book which you say is prepared in ordinary characters is prepared in Spanish, isn't it?

A In Spanish, but I make use of the services of another person.

Q You have never studied bookkeeping, have you?

A I have been employed in a commercial house, and I learned it there.

Q But you have never studied it?

A When I was employed in the tienda, it was there I learned it.

Q What you mean to say in saying that you learned bookkeeping is that you learned to write numbers, isn't that a fact?

A I know how to write figures in Chinese and in ordinary characters also.

Q But the question is that when you say you learned bookkeeping is that you merely learned to write figures in Chinese?

A. The method of keeping books in Chinese.

Q What do you understand by "ledger"?

A The entries are copied from the daybook and posted to the ledger.

Q So that the ledger is a copy of the daybook, is that what you mean to say?

A Yes, sir.

MR. GIBBS: I wish to have it appear that the translation is erroneously made, that all of these distinctions between "copiar" and "trasladar" and "transferir" are questions of interpretation only, and not what the witness has said.

MR. FELIX: I wish it to appear that in accordance with Mr. Sy Siangco, the interpreter of the Bureau of Internal Revenue, the interpretation given by the official interpreter to the last question is correct.

Q How did you learn this bookkeeping which you say you learned?

A Learning how the entries are made in business.

Q Only by seeing how the entries are made is that how you learned bookeeping? Is that what you mean to say?

A Sometimes when I met with difficulties and did not understand, I asked questions and found out the way of it.

Q How long did it take you to learn the bookkeeping which you say you learned?

A Two or three years; as entries were made in the books I asked questions and found out.

Q During these two or three years that you say you were learning bookkeeping, your employment was not that of bookkeeping, but merely as a salesman in the store, isn't that a fact?

A Yes, sir.

Q And do you mean to say that during these two or three years you abandoned your other duties to find out how the other employees in the tienda attended to their business?

A Yes, sir.

RE-CROSS EXAMINATION BY

MR. GIBBS:

Q Do you mean to say that your ledger is a duplicate of your daybook?

A They are the same, but the accounts are separate. The expenses for vehicles, for example, are itemized.

Q You said on cross examination that your ledger was a copy of your daybook, is that what you mean to state?

A I mean to say that the entries are copied from the day-book to the ledger, but separately.

Q Where were you educated?

A In China.

Q Did you take any lessons or instructions in bookkeeping while you were being educated on other subjects?

MR. FELIX: Objected to as leading.

A I learned the national books, geography and other things.

Q The fact is that you are keeping a set of books now, however badly or however well?

A Yes, sir.

Q In this Bureau of Internal Revenue book that you keep, do you have to make any other entries than figures?

A Nothing else. If it says "January", all I do is to copy "January".

Q Do you know enough Tagalog to keep books in Tagalog?

A No.

Q Do you know enough Tagalog to write a business letter in that language?

A No.

Witness excused.

YAO KAM, 42 years of age, married, merchant, 1512 Calle Herran, a witness on behalf of the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q What is your nationality?

A Chinese.

Q How long have you lived in the Philippine Islands?

A More than twenty years.

Q What kind of merchandise do you handle?

A Drygoods.
Q Are you the owner of the store?
A Yes, sir.
Q How long have you owned it?
A More than ten years.
Q Was your father a merchant in the Philippines?
A No, sir.
Q Can you state approximately what your total sales for the year 1922 were?
A More than eighteen thousand pesos.
Q How many employees have you?
A Two.
Q Of what nationality are they?
A All are Chinese.
Q Do you keep books in your establishment?
A Yes, sir.
Q What books do you keep?
A A daybook and a ledger.
Q Who keeps them?
A I do.
Q Where did you learn bookkeeping?
A In China.
Q Are these books kept in Chinese?
A Yes, sir.
Q Can you read or write any other language than Chinese?
A No, sir.
Q State approximately what your annual profits are in normal times.
A More than one thousand pesos.
Q How much more than one thousand pesos?
A From twelve hundred to thirteen hundred, other times from eleven hundred to twelve hundred.

Q Do your two employees live with you in the store where you do business?

A Yes, sir.

Q Do you all board together?

A Yes, sir.

Q What does it cost the three of you for food and washing each month, approximately?

A Thirty pesos or more, thirty one, thirty two, thirty three.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: I move to strike the entire testimony of the witness, on the ground that even though the enforcement of Act 2972 would be prejudicial to him, he is not a party to this action, and therefore his testimony is entirely immaterial and irrelevant.

Q These twenty years that you say you have spent in the Philippine Islands have been spent in the city of Manila, isn't that a fact?

A Part of the time I spent in the provinces.

Q What province?

A In Lukban, Tayabas.

Q In Tagalog provinces?

A Yes, sir.

Q Where were you married?

A In China.

Q And due to your long stay in Manila and in Tagalog provinces you speak Tagalog, don't you?

A I speak a little, but not much.

Q You also sell drygoods from house to house, don't you?

A No, sir.

Q Not even formerly?

A No, sir.

Q The greater part of your customers are Filipinos, aren't they?

A Yes, sir.

Q And you understand and make yourself understood with them in Tagalog, don't you?

A Yes, sir.

Q And you speak Spanish also, don't you?

A No, sir.

Q Not at all? Not even a little?

A One or two words.

Q Where did you learn bookkeeping, if you learned it?

A In China.

Q In what school?

A In the primary school.

Q Up to what grade or what year of this primary school did you arrive?

A Altogether I studied ten years.

Q In the primary school?

A Not all the time in the primary school, but as I learned I kept advancing.

Q In the same school?

A No, sir, in the next highest school.

Q Have you presented an income tax statement this year?

A Yes, sir.

Q What is the value of the stock of goods in your store?

A Three or four thousand pesos.

Q What is the percentage of overprice, over the cost, which you put on your goods when you sell them?

A Sometimes I put fifteen percent, or sixteen percent, over the cost.

Q And other times?
A Sometimes ten percent.
Q Aside from the salary you give your employees you give them board, room, and washing, don't you?
A Food and washing are for our account.
Q And room also?
A They all live there.
Q You yourself prepared your income tax statement?
A Personally, no.
Q Who prepared it?
A Another person who assisted me.
Q Who is this person?
A These agents whose business it is to go and pay income taxes for those who wish assistance.
Q Did you check over this income tax return when you signed it and before presenting it to the Bureau of Internal Revenue in order to prove its correctness?
A I don't know, but he told me what amount of money was put down there.
Q What do you understand by "ledger"?
A The ledger is also a Chinese book.
Q But what do you understand by that. What do you enter in that book?
A For example, the money which the employees take is first put in the daybook, and later is itemized in the ledger.
Q How did you study bookkeeping, if you have studied it?
A Learning to count, for example, all these things together.
Q Count what?
A To count in Chinese, and all this.
Q What do you mean by "all this"?

MR. GIBBS: Objected to, because it appears from the

testimony of the witness that he is a real bookkeeper, and if there is any doubt as to that, then the inspectors of the Bureau of Internal Revenue can go to his store and find out whether he keeps the books properly or not.

MR. FELIX: The objection is not well founded, because it is not a matter of record that this man is a bookkeeper, and the keeping of books in his tienda, if he keeps them, is no proof that they are kept in proper form.

A To know for example, and then make the mathematical calculation.

Q What is the highest arithmetical operation that you know how to make? Do you know equations? Do you know algebra?

MR. GIBBS: Objected to, as it is shown by the questions put by the fiscal that he knows nothing of bookkeeping, and he is trying to learn it from our experts without paying therefor.

MR. FELIX: It appears that the objection of the attorney Mr. Gibbs is made before a tribunal, before a court, and he does not seem to understand the seriousness of the present action. The witness has shown by his testimony that he knows nothing of bookkeeping, and the questions of this representation tend to demonstrate in a plain and palpable manner that this witness is completely ignorant of bookkeeping and its rules.

MR. GIBBS: And nevertheless it is the pretension of the respondents, in place of keeping their books in their own language, to compel them to keep them in English, Spanish, or a local dialect.

MR. FELIX: That is not the contention of the respondent, but that the witness is ignorant of bookkeeping in Chinese. It should be the same whether he keeps his books in English, Spanish, or any local dialect.

A What is algebra?

Q So that your knowledge of mathematics is limited to how to add, subtract, and multiply?

A Yes, sir.

Q Nothing else than that?

A That is all.

Q And this is the sum total of your study of bookkeeping?

MR. GIBBS: I would like to know from the fiscal how he would apply algebra to bookkeeping.

MR. FELIX: It appears that the question is given a meaning which it is not intended to convey. I want to know to what heights in mathematics this witness has arrived.

Witness excused.

HO TIANG BENG, 51 years of age, married in China, manager of a hardware business, 253 Calle Rosario, a witness for the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you been living in the Philippine Islands?

A I have been living here more than twenty years.

Q Do you own this hardware store?

A Formerly I was in the provinces, but I have been in this establisment about two years.

Q But who is the owner of the establishment?

A Ong Yet Mua.

Q What is your nationality and that of the owner of the store?

A Chinese.

Q How many employees are there besides yourself in that store?

A I have six employees.

Q What is the approximate amount of your sales for 1922?

A From one hundred and twenty to one hundred and thirty thousand pesos.

Q What is the nationality of your employees?

A Chinese.

Q What salary do you receive?

A I receive five hundred pesos a year.

Q What salaries do the other six employees receive?

A Some of them four hundred pesos a year, and others four hundred and sixty pesos a year.

Q Do you all live together in the same store where you do business?

A Yes, sir.

Q What does it cost the seven of you for food and washing per month?

A I calculate it at eighty pesos.

Q Do you keep books of account? If so, in what language?

A Yes, sir, in Chinese.

Q Who keeps the books of your establishment?

A An employee of the establishment.

Q Can you read or write any other language than Chinese?

MR. FELIX: Objected to as it does not appear that he can read and write Chinese.

A No, sir.

Q Do you read and write Chinese?

A I write a little.

Q What books of account are kept in your establishment?

A Daybook, ledger.

Q Is your business one of wholesale or retail, or both?

A At wholesale and retail, and local sales in the tienda.

Q With whom do you do your wholesale business?

A When the Chinese provincial customers come, they purchase.

Q Your wholesale customers are Chinese?

A Yes, sir.

Q In normal times what are your approximate annual profits?

A For example, during the last year we had five or six thousand pesos net profits.

Q If you were compelled to keep your books of account in English, Spanish, or some local dialect, would you be able to continue your business?

MR. FELIX: Objected to as the witness is incompetent to answer, and furthermore it calls for the conclusion of the witness.

A No, sir.

CROSS EXAMINATION BY

MR. FELIX:

MR. FELIX: I move to strike the testimony of the witness on the ground that even though the enforcement of Act 2972 would be prejudicial to him, as he is not a party to this action, his testimony would be completely immaterial and irrelevant.

Q This province to which you referred in your direct examination, where you were before you came to this

establishment on Calle Rosario where you work now, what province was that?

A In Cagayan?

Q Cagayan de Misamis or Cagayán de Luzon?

A Cagayan de Tuguegarao.

Q How many years have you been in Manila?

A More than two years.

Q Before going to Cagayan de Luzon, were you in Manila?

A No.

Q From China you went directly to Cagayan?

A Yes, sir.

Q You make sales in your tienda on Calle Rosario, don't you?

Q And the greater part of the customers of that tienda are Filipinos, isn't that a fact?

A The greater part are Chinese.

Q In your retail business?

A They are the Filipinos.

Q You sell to these Filipinos, don't you?

A A little.

Q And these Filipinos with whom you deal, and to whom you sell in your tienda do not speak Chinese?

A They don't speak Chinese, but when they want anything they indicate what they want.

Q And you make yourself understood with them?

A I know the figures and the prices.

Q This salary which you receive, as well as that which you pay to the employees of your tienda is free of board, room, and washing isn't it?

A Yes, sir.

Witness excused.

The hearing at this point was continued until further notice.

SESSION OF SEPTEMBER 1, 1923.

The above entitled cause came on for a continuation of the hearing on this first day of September, 1923, at 10:00 o'clock in the forenoon, and the following proceedings therein were had, towit:

The same appearances were noted as at the previous hearing.

H. B. POND, 41 years of age, married, merchant, vice-president and general manager of the Pacific Commercial Company, resident of Manila, a witness on behalf of the petitioners, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. GIBBS:

Q How long have you resided in the Philippine Islands, Mr. Pond?

A Approximately twenty one years, off and on.

Q What is the character and extent of the business of the Pacific Commercial Company, of which you are the manager?

A The Pacific Commercial Company engages in the importation of products from abroad, and the sale and distribution of these products throughout the Philippine Islands, thru the medium of branch offices and traveling representatives; and also in the gathering and exportation of Philippine products.

Q From what countries are the goods handled by the Pacific Commercial Company imported?

A Various countries throughout the world, but principally from the United States.

Q Who are the principal purchasers and distributors of your goods throughout the Islands?

A The Chinese.

Q Can you state how well organized the Chinese system of distribution of merchandise is?

A The Chinese system of distribution extends throughout the Philippine Islands, through the medium of middlemen in the principal centers, and then by the small storekeepers throughout the Islands, and even extending to the remotest barrios. They are the principal distributing factors in the Philippine Islands of imported goods, and the principal gatherers of goods for exportation in the more remote places.

Q If the Chinese merchants, and especially the small merchants of the provinces were driven out of business by the enforcement of Act 2972, would there be any other means of distributing throughout the islands the merchandise imported by your firm and other firms?

MR. FELIX: Object to the question on the ground that it is entirely immaterial, and for the further fact that the witness is incompetent to testify on that point.

A There would be no other system of distribution available throughout the islands, for the reason that there is not yet developed sufficient Filipino merchants with resources and experience sufficient to provide for the distribution of imported products and the gathering of export products.

Q How long have you been connected with the Pacific Commercial Company?

A Since 1916.

Q What has been your position with the company since that time?

A I was in charge of the import and of the business from 1916 to 1919, and since that time have been general manager.

Q What has been the extent of your experience in dealing with the Chinese merchants in the Philippine Islands?

A I have been dealing with Chinese merchants in connection with the sale of imported goods since about 1907.

Q Are you familiar with the provisions of Act 2972?

A In a general way, yes.

Q State whether or not in your opinion it would be possible for any considerable number of the Chinese merchants of the Philippine Islands to comply with the provisions of that law.

MR. FELIX: Objected to on the ground that the witness is incompetent to testify on that point, and his opinion is requested.

A The larger Chinese distributors or middlemen probably would be able to comply with the law, but the big bulk of the business directly with the consumers and producers is done by the smaller Chinese merchants of rather limited education, and a lack of ability to read and write any other language than Chinese, I do not believe that it would be possible.

Q Has your business experience in the mercantile world brought you into close contact with the accounting or bookkeeping department of business?

MR. FELIX: Objected to as leading.

A Yes.

Q In your opinion, Mr. Pond, can any merchant success-

fully manage his business without full knowledge of the contents of his books of account?

A No, sir.

Q Do you know more or less what the salaries of bookkeepers capable of taking charge of the books of account of merchants would be in the Philippine Islands?

MR. FELIX: Objected to on the ground that the witness is incompetent to testify on that point.

A Filipino bookkeepers, depending upon their ability and experience, and the class of accounts that they have to keep, can be employed at salaries ranging all the way from approximately eighty pesos a month up to approximately five or six hundred a month.

Q From what you know of the extent of the business operated by the smaller Chinese merchants, what would you say as to whether or not their profits would be sufficient to justify the employment of a foreign bookkeeper. By foreign bookkeepers I mean bookkeepers other than Chinese.

MR. FELIX: Objected to on the ground that the witness is incompetent to testify as to that point, and also for the reason that it is not the best evidence.

A The larger Chinese distributors and the larger Chinese middlemen probably could afford to employ bookkeepers. However, the smaller storekeepers and those who deal more generally directly with the consuming and producing public, probably could not afford to employ foreign bookkeepers, partly because the business is not in the aggregate of sufficient volume to warrant their doing so; their margin of profit is not sufficiently large to enable them to do so, while on

the other hand their business is so organized that the accounts are kept by the clerks and not by special bookkeepers, thus making necessary the employment of additional people.

Q From what you know of the business of the Chinese merchants, and of their education and intelligence, what would you say would be the result of an attempt to enforce Act 2972?

MR. FELIX: Objected to on the ground that the witness has not shown that he has examined or has any knowledge of the intelligence of the Chinese merchant, and the question has no foundation yet.

A I believe it would bring serious embarrassment to the smaller Chinese distributors throughout the islands. and probably force a very large number of them out of business.

Q State what you know of the character and reputation of the Chinese merchants of the Philippine Islands for honesty and integrity in business transactions.

MR. FELIX: Objected to on the ground that the question is so general that the witness is incompetent to testify as to the reputation of all of the Chinese merchants in the islands.

A I believe that the Chinese compare very favorably as to integrity and general commercial honor with those of other nations doing business in the Philippine Islands.

Q In your opinion, would it be possible for the Chinese merchants to continue managing their business and at the same time learn Spanish, English, or some local dialect sufficiently well either to keep books in one of those languages, or to intelligently check them up?

MR. FELIX: Objected to as the witness is incompetent to testify as to that point.

A Not without interferring with the ordinary conduct of his business.

CROSS EXAMINATION BY

MR. FELIX:

Q The experience that you have had in business is since 1916, when you entered the commercial firm known as the Pacific Commercial Company?

A No sir; my business dealing with the Chinese dates back to 1907.

Q By the way, as one of the chiefs, in 1916, of the Pacific Commercial Company, and as general manager of that firm since 1919, you did not deal with the smaller merchants, but your dealings have always been with the merchants who have larger stocks, that bought the goods that you imported?

A No sir, we have dealt with both the larger merchants and the smaller merchants throughout the Philippine Islands.

Q Isn't it a fact that the smaller merchants do not usually buy goods from the importers?

A That depends upon the nature of the business which is done by the importer. The Pacific Commercial Company, however, makes it a practice to distribute its merchandise through its own selling facilities throughout the Philippine Islands.

Q But personally you have no dealings with the smaller merchants, do you?

A We have.

Q I mean you.

A Me personally?

Q Yes.

A At the present I do not, but we maintain our own selling organization which is reporting to me all the time, but in previous years I have throughout the Philippine Islands solicited business directly, myself.

Q That is from what year?

A From approximately about 1909 to about 1915.

Q As a matter of fact you did not examine your Chinese customers as to their intelligence or as to their knowledge of languages, did you, or bookkeeping?

A As to languages, we have had to check up on that point on numerous occasions, partly due to the fact that the larger part of our correspondence with Chinese is carried on in Chinese, because they do not understand any other language, and we maintain Chinese translators to handle that correspondence.

Q But you do not know how many there are that carry on their correspondence in Spanish or any local dialect?

A I cannot say how many throughout the islands can or cannot.

Q You testified, Mr. Pond, that probably the smaller merchants could not afford to meet the expense of having bookkeepers; isn't it a fact, Mr. Pond, that these smaller tiendas or stores do not need to have any bookkeepers today?

A Now?

Q Yes.

A No, no special bookkeepers; they keep books but they are kept by the clerks in the stores.

Q Even in the case that Act 2972 is put in force, the smal-

ler Chinese tiendas should not necessarily have bookkeepers?

A If they cannot read or write the language required by law, it seems to me that a person to keep the books would be essential.

Q Don't you think,Mr. Pond, that in cases of the smaller tiendas, four, five, six or ten tiendas might have only one bookkeeper?

A They might, provided the tiendas were sufficiently close to each other, but you take out in the provinces, and the Chinese tiendas are rather widely scattered in the barrios.

Q Do you mean to say with your statement, Mr. Pond, that persons who do not know how to read and write can not engage in business?

A No, I did not say that.

Q What do you mean when you say that a person can not successfully manage his business without full knowledge of the contents of his books of account?

A I mean by that as a general rule no person can successfully conduct his business without not only having a knowledge of his accounts, but being able to look into them from time to time. There are of course exceptions to this general rule. There have been cases of very successful men who have been able neither to read or write, but where such has been the case it has been absolutely essential that they have associated with them men in whom they have implicit confidence, who can explain to them what is in their books of account, and who can get the information for them from the books of account.

Q You know many instances where people who do not know how to read or write have made fortunes, do you not?

A Yes, I know of some instances. They are exceptions to the general rule.

Q Since 1919 up to the present time you have had no direct dealings with the Chinese merchants, have you?

A Yes, I have.

Q Personally?

A Personally. I see them almost every day. They come to see me, or I see them.

Q The smaller ones?

A Not the smaller ones ordinarily. The large merchants.

Q In what provinces have you been of the Philippine Islands?

A Me personally, in the islands?

Q Yes.

A I have been in the province of Pangasinan, Mountain Province, Nueva Ecija, Bulacan, Pampanga, Rizal, Laguna, Tayabas, Albay, Sorsogon, Samar, Leyte, Cebu, Iloilo, Mindanao, Jolo, and various other provinces.

Q How many other provinces, more or less?

A I have named a considerable number of them. I might mention Ambos Camarines, which I believe is now called Camarines Norte and Camarines Sur, Davao, Cotabato, Negros Oriental and Negros Occidental. I think that's about all. Capiz.

Q Do you mean to say that you have been in all of these provinces on business transactions, or just to visit them?

A Yes sir, on business transactions.

Q You have been only in the capitals of these provinces, haven't you?

A No, I have been through the provinces rather generally.

Q All the municipalities?

A I won't say all the municipalities, but in the various provinces I visited a good many towns.

Q And these trips that you made to the provinces were made when you were one of the department chiefs of the Pacific Commercial Company?

A I have visited these various provinces, and in many cases the merchants in them before I joined the Pacific Commercial Company, and since I have joined the Pacific Commercial Company, not only as general manager, but while I was in charge of imports.

Q Are you a bookkeeper yourself?

A I am very well informed, and know the principles and practice of higher accounting.

Q You did not examine the books nor the correspondence or records of the larger Chinese merchants in order to see and verify how they distribute the goods that they import or purchase from your company, did you?

A The books of the Chinese are generally kept in Chinese, and I do not read Chinese and would not have the opportunity of going into the details of their account. I have on occasion been connected with receivership proceedings in which the books of the Chinese have been gone over and translated and I have seen records of their transactions.

Q How can you then say that the general organization of the business of the islands of the larger Chinese mercants, distributes them all over the islands?

A Through our business dealings with them, and the thousands of Chinese customers that we have scattered through the islands from Aparri to Jolo.

Q You know that they bought the goods from you, but you don't know what they did with the goods that they purchased?

A As they generally buy in large quantities, I judged that they must distribute them rather than consume them themselves.

Q But you don't know whether they sent them back again to other countries?

A I don't see much possibility of their sending them to other countries. If a Chinese merchant in Samar should buy goods from us, he surely couldn't compete with the fellow from abroad who was exporting directly from Manila or Cebú. Furthermore, the exportation of imported goods is small, relatively speaking, amounting ordinarily to not more than two million pesos a year.

Q You speak Spanish, do you?

A Yes.

Q And you acquired a knowledge of Spanish in your stay in the islands, didn't you?

A Yes.

RE-DIRECT EXAMINATION BY

MR. GIBBS:

Q Mr. Pond, how large is the volume of business done by the Pacific Commercial Company in the Philippine Islands?

A The cost of imported goods sold by us amounts to approximately twelve per cent of the total imports.

Q How does the volume of your import business compare with that of any other single import business of the Philippine Islands?

A I believe it is the largest.

Q Taking into consideration the spirit of competition which exists between all merchants, would it, in your opinion, be feasible or possible that one bookkeeper should take care of the books of more than one establishment?

MR. FELIX: Objected to as this is a question which has been already answered in the cross examination.

A I do not think that it would be good business practice.

Q How in your oponion would the effect of compelling Chinese establishments to keep their books exclusively in English or Spanish compare with the effect of compelling an American business establishment to keep its books exclusively in Chinese?

MR. FELIX: Objected to on the ground that the question is entirely immaterial, and furthermore the witness is incompetent to testify. The witness should be required to give his statement as to facts, and not his opinion.

A From what I understand about the difficulties of the Chinese language, I should imagine it would be more difficult for the American to keep his books in Chinese than for a Chinaman to keep his books in English.

Q That is from your standpoint as an American, isn't it?

A Yes.

Q You don't know how it would look from the standpoint of a Chinese?

A No.

Q Wouldn't it be about as impossible for a Chinaman to keep his books in English without being able to read or write English, as it would be for an American to keep his books in Chinese, without being able to read or write Chinese?

A Yes, absolutely.

MR. FELIX: I move to strike all of that part of the testimony of this witness tending to show that the enforcement of Act 2972 might be prejudicial to the Chinese merchants that are not parties to this action.

Witness excused.

The hearing at this point was continued until further notice.

Friday, September 7, 1925.

The hearing was resumed at 2:30 o'clock p. m., the commissioner, the attorneys for the respective parties, and the reporters being present:

Chan Bon Chong, a witness called on behalf of the petioners, was duly sworn and testified as follows through the interpreter:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name.

A Chan Bon Chong.

Q How many years of age are you?

A 43 years.

Q Are you married or single?

A Married.

Q What is your business?

A Importer.

Q Where is your place of business?

A At No. 203 Calle Nueva, Manila.

Q Where do you live?

A At No. 901 Calle Lepanto.

Q What were your total sales in 1922?

A More than P400,000.00.

Q Do you sell cigars, cigarettes and liquors?

A Cigars and cigarettes, but not liquors.

Q Did that total of about P400,000.00 include cigars and cigarettes, or not?

A It is not included.

Q Do you read or write any language other than Chinese?

A I know a little bit of Spanish.

Q Do you keep books of account in your business establishment?

A Yes, sir.

Q What books do you keep?

A Chinese books, and besides the books I keep in Chinese, there is a book which is given to us by the office of the Bureau of Internal Revenue, written in Spanish.

Q In what language do you keep your other books, and what other books do you keep?

A Chinese books.

Q What particular Chinese books do you keep?

A A daily sales book, and books in which are entered transaction with other firms.

Q You spoke of an Internal Revenue book kept by you: have you got that with you?

A Yes, sir.

(The witness produced the book referred to, which was marked "Exhibit E" for identification.)

Q What is your nationality?

A Chinese.

Q Has there been any complaint filed against you by the Fiscal of the City of Manila for violation of Act No. 2972, known as the Bookkeeping Law?

A Yes, I remember; it was in March of this year.

Q I see that the name "Chan Hong Chiu" is marked on the back of this Internal Revenue book, Exhibit E. Who is Chan Hong Chiu?

A He is my father.

Q Is your father engaged in the business that you are engaged in?

A Yes.

Q Who is the principal owner of the business?

A My father.

Q Do you know whether a complaint was filed against him at about the same time, charging him with a violation of Act No. 2972?

MR. FELIX: I admit that a complaint was filed in March, 1923, against this witness and his father.

Q Who is the principal owner of this mercantile business at Nos. 203-205 Calle Nueva, Manila?

A My father.

Q Does your father read or write any language other than Chinese?

A He knows how to read a little bit of Spanish, but doesn't know how to write it.

Q Do you or does your father know how to read any language other than Chinese sufficiently well to enable you to check up books of account in any language other than Chinese?

MR. FELIX: I object to the question, on the ground that it has already been answered.

A No.

Q At the time that the complaint was filed against you and your father for violation of Act No. 2972, were you keeping this Internal Revenue book, Exhibit E?

MR. FELIX: I object to the question, on the ground that it is immaterial.

A Yes.

Q Had this book, Exhibit E, been approved by the Internal Revenue Bureau?

MR. FELIX: I object to the question on the ground that no foundation for it has been laid. There is no showing that the Internal Revenue Bureau approves this man's accounts, but rather that they are submitted to the Internal Revenue Bureau—which is a totally different matter.

A Yes, it is signed by an Internal Revenue official.

Q Did the inspectors of the Bureau of Internal Revenue inspect that book from time to time?

MR. FELIX: I object to the question on the ground that it is leading.

A Yes, because they were marked here by the inspector. (The witness indicating the signatures appearing at different places in Exhibit E.)

Q Between what dates was that Internal Revenue book kept?

MR. FELIX: I object to the question; the book itself shows that, and is the best evidence.

A Beginning January 3, 1921, up to this present year.

Q What is the date of the last entry?

A September 6, 1923.

Q Did the Bureau of Internal Revenue know that you were keeping that book at the time they filed the complaint

against you and your father for violation of Act No. 2972?

MR. FELIX: I object to the question on the ground that it is immaterial.

A Yes, they knew it.

Q About how often were your books inspected by the Internal Revenue Bureau?

A They don't inspect them regularly, but you can find out in the record here, in this Exhibit E.

Q When was the last time they inspected this particular book, Exhibit E?

A Sometimes they don't sign the book and sometimes they sign it, so I don't remember the last time they inspected it. They inspect it almost once a month.

Q Had they inspected your books recently before the time they filed this complaint against you and your father?

MR. FELIX: I object to the question, on the ground that it is immaterial and irrelevant, and also leading.

A Yes.

Q At the time they filed the complaint against you, or previous to that time, state whether or not they seized your books of account and took them to the Bureau of Internal Revenue.

MR. FELIX: I object to the question, on the ground that it is immaterial.

A I remember that quite often, before the complaint was filed against me, they used to seize my books and return them to me after a few days.

Q At the time they seized your books, just before they

filed the complaint, did they also see that Exhibit E, the Bureau of Internal Revenue book?

MR. FELIX: I object to the question, on the ground that it is immaterial and that it has already been answered.

A Yes, they saw the book.

Q Did they take that book to the Bureau of Internal Revenue, or did they take only the books that you kept in Chinese?

MR FELIX: I object to the question on the ground that it is leading.

A They didn't take this book Exhibit E, no.

Q Did they take the books kept in Chinese?

A Yes.

CROSS-EXAMINATION BY MR. FELIX:

Q How long have you been in the Philippine Islands?

A More than 30 years.

Q Have you spent all that time in the City of Manila?

A I returned to China only once, about 23 years ago.

Q All together, how long a time have you been in the City of Manila?

A More than 30 years.

Q Did you get married in the City of Manila?

A Yes.

Q To a Filipina woman?

A With a Chinese mestiza.

Q The certification by the agents of the Bureau of Internal Revenue, which you have testified about in your direct examination, is the certification which appears on the inside cover of the book?

A Yes, without that signature I would not accept this book.

Q So that aptroval by the agents of the Bureau of Internal Revenue to which you have referred is the approval of this book as a matter of form.

A Yes, that is the form book. They told me to keep the amount of my daily sales in that book.

Q The checking up of the contents of this book to which you have referred consisted simply of going over the figures which appear in the pages of this book, Exhibit E; is that so?

A In checking this book, the inspector has compared it with the Chinese account book before checking it.

Q How much time did the inspectors of the Bureau of Internal Revenue devote to making each check-up of your books?

A I couldn't tell you the length of time. Sometimes it takes longer, and sometimes a shorter time.

Q How long a time was it, more or less?

A If the amount of sales is large, they just take the books to the office and return them after a few days.

Q How many times did they take your books away to the office of the Bureau of Internal Revenue?

A I don't remember how many times.

Q It was only once or twice, wasn't it?

A I don't remember how many times.

Q Usually, the agents of the Bureau of Internal Revenue who went to your place of business were Filipino agents, were they not?

A Sometimes Chinese, and sometimes Filipinos, and sometimes they came together.

Q And the Filipino agents of the Bureau of Internal Rev-

enue who went to check up your books couldn't speak speak Chinese, could they?

A He was accompanied by a Chinese.

Q Answer the question: the Filipino agents of the Bureau of Internal Revenue who went to check up your books couldn't speak Chinese, could they?

A No, he couldn't speak Chinese, because he is a Filipino.

Q Referring to the suit which was filed against you for violation of Act No. 2972, you have filed a bond in that suit; isn't that so?

A Yes.

Q And you filed that bond in the Court of First Instance of Manila; isn't that true?

A Yes.

Q And you and your father were never arrested for violation of that law?

A Never.

Q What percentage of gross profit do you add to the cost of the goods which you sell?

A It is impossible to answer that, because sometimes I sell goods at a loss and sometimes at a profit.

Q Ordinarily, what is the average percentage of gross profit that you add to the cost of the goods which you sell?

A I couldn't tell you the exact percentage. Sometimes I make two or three per cent, sometimes I lose more than that, because business is a very uncertain thing.

Q That two or three per cent. of gross profit which you add to the cost of your goods is put on the goods when sold at wholesale, is it not?

MR. GIBBS: I object to the question, on the ground that it assumes a state of facts which has not been

proven, that is to say, that the witness or any other merchant can fix a certain profit at which he will sell his merchandise.

A We never sell our goods at retail, but always at wholesale, and when the demand is good we sell at a higher price. When many people are importing the same kinds of goods, we lose money, and when the arrivals are heavy we lose money.

Q You filed an income-tax return for last year, did you not?

A Yes, sir.

Q What was the amount of profit shown on that return?

MR. GIBBS: I object to that question, on the ground that it does not call for the best evidence. The respondent Collector of Internal Revenue refused our request to furnish us the best evidence as to the income tax paid by the witness or paid by any other Chinese merchant in the Philippine Islands.

MR. FELIX: I wish to modify that statement a little, because the Collector of Internal Revenue did not refuse to supply any income-tax returns. What he refused to do was to make delivery of the income-tax returns without the proper consent of the persons who had made those returns.

MR. GIBBS: In answer to the last statement of the Fiscal, I wish to make it appear of record that the petitioners presented a motion, accompanied by the written authorization of the Chinese merchants of the City of Manila, requesting that the income-tax return of each one of them be given by the respondent Collector of Internal Revenue as evidence in this case, and the Fiscal filed a written opposition thereto

and prevailed upon the Supreme Court to deny our motion. For that reason, we strenuously object to requiring our witnesses to present secondary proof as to the income taxes paid by them.

MR. FELIX: As the attorney for the petitioners has made reference to what is already of record, I rely on the record itself, which is the best answer to the statement of the attorney for the petitioners. The witness does not have to answer the question if he doesn't want to, of course. The question is put to him, and he can answer it if he wishes.

MR. GIBBS: We don't insist on any privilege other than that of requiring the submission of the best evidence.

A I can't tell whether I made money or lost it, but you can find out from the records in the office of the Bureau of Internal Revenue.

Q When you speak of these inspections of your books which you say the agents of the Bureau of Internal Revenue have made, you are referring only to the inspection of this book Exhibit E; isn't that true?

A Including also the Chinese books.

Q Did the agents of the Bureau of Internal Revenue always examine your other books every time they examined this book Exhibit E?

A Yes, they always compared the books.

Q Do you maintain commercial relations with Filipino merchants?

A Yes, but very few.

Q And with Spaniards?

A Yes, a few.

Q And with Americans?

A Yes.

Q Very well: referring to the correspondence which you carry on with other merchants, American, Spanish or Filipino, that correspondence is carried on in English or Spanish, is it not?

A Yes.

Q And the invoices which are made out in your place of business when you sell goods to Filipinos, Spaniards or Americans are also made out in English or Spanish, as the case may be, are they not?

A Yes, those are made out by a Filipino typist.

Q An employee of your office?

A No, he works in our office only one hour a day.

RE-DIRECT EXAMINATION BY MR. GIBBS:

Q Is the correspondence which you refer to all written by the same Filipino typist whom you speak of as working an hour each day in your office?

A Yes.

MR. FELIX: No further questions.

The witness was thereupon excused, and left the stand.

In view of the statement made by the witness that he might be subjected to a fine in case he left here as an exhibit his Internal Revenue daily sales book, marked "Exhibit E", it was agreed by and between the attorneys for the respective parties that the witness might take the book with him and make arrangements with the respondent Collector of Internal Revenue to begin a new daily sales book, and then return the book marked "Exhibit E" to be used as an exhibit in this case.

Wong Yu, a witness called on behalf of the petitioners,

was duly sworn and testified as follows through the interpreter:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name.
A Wong Yu.
Q Your age, residence, and occupation.
A 32 years old, living at 436 Calle Poblete, importer.
Q How long have you lived in the Philippine Islands?
A About 13 years.
Q What is your nationality?
A Chinese.
Q From what country do you import your goods?
A From Hongkong, Shanghai, Foochow, and America.
Q From whom do you purchase your merchandise in those countries?
A From Americans, in America, and from Chinese in China.
Q And in these purchases which you make in foreign countries, do you have representatives there who buy for you?
A I have a representative in Hongkong, Shanghai and Foochow, but none in America, because I buy the goods through the American agents.
Q And where are the American agents through whom you buy from America?
A In Manila.
Q Do you buy from one agent or from more than one agent of American firms in Manila?
A From many agents in Manila.
Q And the agents you refer to are the agents of the business establishments in America?

A Yes, sir.

Q In making your purchases of goods from China, do you do it by correspondence or by going to China?

A By correspondence.

Q In what language is that correspondence conducted?

A In Chinese.

Q Are you able to read or write any other language than Chinese?

A I only know Chinese.

Q How long has this business which you are running now been operated?

A More than 40 years now.

Q Who conducted the business before you?

A My father.

Q Is your father living?

A He is dead.

Q What books of account do you keep?

A Chinese books.

Q How many books of account and what particular books of account do you keep?

A I have eight Chinese books there.

Q Do you keep a Bureau of Internal Revenue sales book?

A Yes.

Q In what language is that book kept?

A In Chinese.

Q Have your Chinese books of account been inspected from time to time by the Bureau of Internal Revenue?

A Yes.

Q Of what nationality were the inspectors?

A Chinese and Filipino.

Q Do you know whether any of the Filipino inspectors can read Chinese figures?

MR. FELIX: I object to the question on the ground that it is wholly immaterial, that no foundation has been laid for it, and also that it is leading.

A Yes.

Q Do you know the names of the Filipino inspectors who read Chinese figures?

A I know them by sight, but not by name.

Q How do you know the Filipino inspectors are able to read the Chinese figures?

A Because sometimes I make a mistake in figuring up a number, and he used to catch it.

Q What book was this in?

A In the sales book.

Q The Internal Revenue sales book?

A Yes.

Q And that Internal Revenue sales book was kept in Chinese?

A Yes.

Q How many Chinese employees have you?

A Ten, all together.

Q Do you have a bookkeeper, and if so, in what language does he keep your books?

A Yes, in Chinese.

Q Are you able to read and write Chinese?

A Yes.

Q Would you be able to check up and understand books of account kept in any other language than Chinese?

A No.

Q Is your Chinese bookkeeper able to keep books of account in any language other than Chinese?

MR. FELIX: I object to the question on the ground

that the witness is not qualified to testify on that point.

A No.

Q Would you be able to continue operating your business if Act No. 2972 were enforced?

MR. FELIX: I object to the question on the ground that it is immaterial.

A No.

CROSS-EXAMINATION BY MR. FELIX:

Q Those 13 years that you say you have spent in the Philippine Islands have been spent in the City of Manila, have they not?

A Yes.

MR. FELIX: I move that the entire testimony of this witness be stricken out, for the reason that even though the provisions of Act No. 2972 were prejudicial to him, he is not a party to this action, and furthermore because his testimony is wholly incompetent, irrelevant and immaterial to the case at issue.

Q You have testified that you import goods from Hongkong, Shanghai, Foochow and America: do you purchase the goods that you import from Hongkong, Shanghai and Foochow from English merchants or other foreign merchants?

A From Chinese firms only.

Q Do you do business only at wholesale, or at retail?

A At wholesale and retail also.

Q What kinds of merchandise do you import and deal in?

A Rice, fl[illegible], tea, and many other provisions.

Q What [illegible] the total amount of your sales last year?

A Abou[illegible]0,000.00 or ₱500,000.00.

Q You said that on some occasions you have made a mistake and the inspectors corrected your mistake: now, then, is it not true that the inspectors who corrected your mistakes were Chinese inspectors?

A No, Filipino inspectors.

Q Did those Filipino inspectors speak Chinese?

A No.

Q And they couldn't read Chinese, either?

A They could only read the figures, not the letters.

Q How much time did the Internal Revenue inspectors ordinarily devote to the checking up of your books each time that they went to your place of business?

A I couldn't tell you the length of time. Sometimes it took a longer time.

Q More or less, how much?

A About 30 minutes.

Q Where is your place of business?

A At 436 Calle Poblete, Manila.

Q What percentage of gross profit do you add to the cost of the goods which you sell at wholesale?

A Business is very uncertain. I couldn't tell you how much I add to the cost of the goods which I sell, because sometimes I make money and sometimes I lose.

Q Ordinarily, what is the percentage of gross profit which you add to the cost of the goods which you sell at wholesale?

A I can't answer that question.

Q In the business of importing goods from America, you exchange correspondence with the American merchants from whom you buy, do you not?

A No.

RE-DIRECT EXAMINATION BY MR. GIBBS:

Q When you sell merchandise imported by you, you have to sell it according to its market price don't you?

A Yes.

RECROSS-EXAMINATION BY MR. FELIX:

Q Do you sell at wholesale to the Filipino, American and Spanish merchants in the Philippine market?

A Very seldom.

Q When you sell to these American, Spanish and Filipino purchasers, you make out invoices to them, do you not?

MR. GIBBS: I object to the question on the ground that it assumes a state of facts not proven.

A I don't know how to read either English or Spanish, so I have in the office a printed form of invoice indicating the articles, and I just tell my customer to put down his name on the invoice.

Q Do you mean to say that your customers are the ones who make up your invoices?

A If they wish to, yes. I ask them to do it, but if they are not willing I ask someone else to do it.

Q And those invoices which are made up in your office are made up in English or Spanish, are they not?

A I don't know; out, see copy how to read them.

REDIRECT EXAMINATION BY MR. GIBBS:

Q Do you receive cash for those sales that you make to Americans, Filipinos and Spaniards, for whom this class of invoice is prepared?

A Cash, and sometimes credit.

RECROSS-EXAMINATION BY MR. FELIX:

Q In those cases in which you sell goods on credit, they sign a chit to you for the amount, do they not?

A Yes, a chit.

Q And that chit is made up in English or Spanish, as the case may be?

A I don't know in what language they write it. They just put down the figure, and I just see the figure on the chit.

Q Where do you have your retail store?

A In the same building.

Q You wait upon the public also, do you not?

A Yes.

Q And most of your customers who purchase at retail are Filipinos, are they not?

A About one per cent, only of my customers are Filipinos.

Q And you make yourself understood to your customers, and they make themselves understood to you?

A Yes; if not we understand each other by signs.

There being no further questions, the witness was excused, and left the stand.

Ng Chung, a witness called on behalf of the petitioners, was duly sworn and testified as follows through the interpreter:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, and occupation.

A Ng Chung, 42 years old, importer, 410 Calle Poblete, Manila.

Q What is your nationality?

A Chinese.

Q How long have you been conducting this business?

A About 20 years now.

Q How many employees do you have?

A Nine employees.

Q What is their nationality?

A All Chinese.

Q Do you keep books of account, and if so, in what language?

A Yes, in Chinese.

Q Do you keep a full set of Chinese books a day book, and ledger, and others?

A Yes.

Q Do you keep a Bureau of Internal Revenue daily sales book?

A Yes.

Q In what language is that book kept?

A That is written in Arabic figures.

Q From what countries do you import your merchandise?

A From Hongkong, Shanghai, Singapore, Saigon, and San Francisco.

Q How do you purchase your merchandise from the United States, or from San Francisco?

A From a Chinese in San Francisco.

Q How do you conduct your correspondence with the various people through whom you purchase your goods in those countries that you have mentioned?

A In Chinese.

Q Are you able to read or write any other language than Chinese?

A No.

Q Is there anyone in China interested with you in your business here in the Philippine Islands?

A Yes.

Q Do you have any partner or partners in China?

A Yes, in Hongkong.

Q Do you report the progress of your business to your partner in Hongkong?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A Yes.

Q How do you make that report?

A In Chinese.

Q Do you furnish him balances from your Chinese books?

MR. FELIX: I object to the question on the ground that it is leading.

A Yes.

Q Would you be able to continue operating your business if Act No. 2972 were enforced?

MR. FELIX: I object to the question on the ground that it is immaterial, inasmuch as the law is in force, as a matter of fact.

A No, it would be quite hard for me to continue in business.

CROSS-EXAMINATION BY MR. FELIX:

Q You are married, are you not?

A Yes.

Q And you married here in the Philippine Islands?

A No, in China.

MR. FELIX: I move that the entire testimony of this witness be stricken out, for the reason that even though the provisions of Act No. 2972 were prejudicial to him, he is not a party to this action, and fur-

thermore because his testimony is wholly incompetent, irrelevant and immaterial to the case at issue.

Q What kinds of merchandise do you import from foreign countries?

A Rice, flour, vegetable oils, lard, beans, and other provisions.

Q You have your place of business at No. 410 Calle Poblete, have you not?

A Yes.

Q And you sell goods there at wholesale and at retail?

A No, only at wholesale.

Q What was the total amount of your sales last year?

A ₱720,000.00 last year.

Q Did you file this year an income-tax return covering your profits for last year?

A Yes.

Q And do you purchase from English or other foreign merchants the goods which you import from Hongkong, Shanghai, Singapore and Saigon?

A No, from Chinese.

Q You maintain commercial relations with American and Spanish and Filipino business houses in the Philippine Islands, do you not?

A No, very seldom.

Q. Do you mean to say that everything you import is sold by you only to the Chinese?

A Yes, out of every thousand pesos' worth of merchandise, ₱999.00 goes to the Chinese.

Q And how about the other one-tenth of one per cent?

A I have no European customers.

Q Nor Filipinos?

A Only one Filipino.

Q And you are able to make yourself understood with that Filipino customer, are you not?

A By signs only I can understand him.

REDIRECT EXAMINATION BY MR. GIBBS:

Q What was the amount of net profit upon which you paid income tax last year?

A I don't remember; I would have to look over the books. I think it was not more than P1,000.00.

Q Who made out for you your income-tax return?

MR. FELIX: I object to the question on the ground that it assumes a fact not in evidence.

A I have got to get someone who knows our language and who knows how to write the other language.

RECROSS EXAMINATION BY MR. FELIX:

Q You yourself personally signed that income-tax return, did you not?

A Yes, I signed the income-tax return after I compared with my books.

There being no further questions, the witness was excused and left the stand.

The hearing was then, at 5:00 o'clock p. m., continued until Monday, September 10, 1923, at 2:30 o'clock p. m.

The hearing was resumed at 2:30 o'clock p. m. on Monday, September 10, 1923, the commissioner, the attorneys for both parties, the reporters, and the interpreter being present.

William T. Nolting, a witness called on behalf of the petitioners, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q Please state your name, residence, and occupation.

A William T. Nolting, residing at No. 177 Calle Valenzuela, Santa Mesa, Manila; occupation, President of the Bank of the Philippine Islands.

Q Mr. Nolting how long have you live in the Philippine Islands?

A I joined the Philippine Government service on March 1, 1899, and resigned to go to South America early in 1914.

Q State what your business and professional career has been in the Philippine Islands.

A I have served as Director of Posts, as Special Financial Agent of the Government, as Purchasing Agent, and as Collector of Interal Revenue. After returning here in 1921, I was Auditor of the Philippine Islands.

Q What knowledge have you of accounting and bookkeeping, Mr. Nolting.

A I have quite an extensive knowledge of bookkeeping and accounting.

Q What was your career in South America in your profession as accountant and auditor?

A I went to South America to manage and to install accounting systems in a 4,000-mile railway system, two large hotels, 9,000,000 acres of colonization land, 6,000,000 acres of cattle ranges, and the largest sawmill in South America.

Q To what corporation or concern did all this property belong?

A To the Brazil Railway Company. The Brazil Railway Company was an American corporation, but all of the funds were furnished by the bankers of France, Great Britain, and Belgium. During the Balkan War and

early in 1914 the Brazil Railway Company, on account of the mismanagement of its different enterprises in South America, could not pay its bond interest. Therefore, the bankers concerned applied to an American court for the appointment of a receiver. In view of the fact that it was an American corporation, an American had to be appointed as receiver, and they selected ex-Governor-General W. Cameron Forbes. Governor Forbes put me in charge of all the interests in South America, and after remaining there for about six years, we were able, by good management and the installation of a good accounting system, to save the properties and turn them back to the owners as paying and going concerns.

MR. FELIX: I move that the answer of the witness be stricken out as being wholly immaterial to the case at issue.

Q What, if any, experience have you had in the Uited States in your profession as an expert accountant?

A I have made examinations of very large concerns in the United States for financial groups in New York and Boston.

Q If I understand you, Mr. Nolting, you are at present the President and Manager of the Bank of the Philippine Islands.

A Yes, sir.

Q In your positions as Auditor of the Philippine Islands and Collector of Internal Revenue of the Philippine Islands, and later in your position as President and Manager of the Bank of the Philippine Islands, state whether or not you have come into close contact and have become familiar with the mercantile and in-

dustrial establishments of the Philippine Islands, and particularly with those of the City of Manila.

A I have.

Q State whether or not, in those same positions, you have become familiar with the methods of accounting employed by the merchants of the City of Manila.

A I have.

Q Are you familiar, in a general way, with the form of Chinese books of account and the kind of paper of which they are composed, and with the method of making entries therein?

A I am.

Q Explain to the commissioner how the Chinese characters are entered in the books of account of the Chinese.

MR. FELIX: I object to the question on the ground that the witness is not qualified to testify as to the method of making these entries. So far the witness has not said a word as to his knowledge of the Chinese language.

MR. GIBBS: We are not talking about his knowledge of the Chinese language, and he doesn't need to know anything about the Chinese language to be able to testify as to their method of accounting.

A The Chinese accounting books are, in my opinion, very well devised, because they are made of a peculiar class of paper and are bound in a very secure manner. The characters are applied by means of a brush. After that character, or any writing, is put on that paper, it is impossible to make an erasure without its being detected. To that extent, I think there is

much more security in the Chinese books than in the books of the merchants of other nationalities generally.

Q Mr. Nolting, what are the essentials of success in any mercantile or industrial enterprise?

MR. FELIX: I object to the question as being immaterial.

A In my oponion, there are there things which are essential for a successful business: first, sufficient capital; seccond, efficient management; and third, efficient accounting. No business of any volume can reach the maximum success without the three being ever present. Two of them will never do, and one certainly will never do. Those three must be there constantly.

Q Why can a business not be successfully managed without an accurate and efficient accounting system?

A Because the manager would be in the dark as to what he was doing, just as much so as a captain sailing the seas without a compass.

Q How complete and extensive must the books of account be in order to insure accuracy and efficiency such as are necessary for the successful management of of any business enterprise?

A The system of accounting must be clear and concise, and must follow every step in a business transaction until it is finally recorded in the ledger. The ledger is the summary of all transactions and is the book from which the balance sheet is made or extracted, and it tells the story of success or failure.

Q May any mercantile business, however small be successfully and efficiently managed without keeping accurate books of account?

A I don't believe so.

Q What books of account do you consider indispensable, Mr. Nolting, for an efficient system of accounting?

A A cash book, a journal, and a ledger.

Q Mr. Nolting, what study and practice are necessary to equip a person for the profession of accounting and bookkeeping?

A First of all, a person should have a grounding or schooling in the principles of accounting, but with that he would be of very little use to a mercantile concern until he had had actual experience and training under an efficient accountant. That might take two, five, or seven years.

Q Mr. Nolting, state whether or not bookkeeping and accounting have gained in importance as a factor in modern business, and how their importance compares with that of the management of the business.

MR. FELIX: I object to the question, on the ground that it is wholly immaterial to the case at issue.

A At the present time accounting—which, of course, includes bookkeeping—is one of the professions. It has become so important that a bank will not advance one cent of money—that is, a well-managed bank will not advance one cent of money—to a concern which cannot render an up-to-date statement of its finances, prepared by a well-known accountant.

Q State whether or not it is necessary for a successful bookkeeper, according to modern business methods, to have more than a mere technical knowledge of bookkeeping.

A He must have a practical knowledge, and he must also

have a knowledge of the business. I am speaking now of the right way to do things.

Q Mr. Nolting, is it possible for any person, without some knowledge of bookkeeping or accounting, to check up intelligently or revise a properly kept set of books of account, even though they be kept in a language known to that person?

A No, sir.

Q Why not?

A Because, as I said before, a person must have the technical knowledge as well as a practical knowledge of accounting, and without that he cannot allocate the different items that pass through a general business correctly, and by not doing so, and by making errors in the proper distribution of his accounting, it might be a very costly procedure for the owners of the property.

Q What do you know as to whether the Chinese system of bookkeeping is the same as or different from the American or European system?

A It is naturally different, by reason of the language and the method of entering the items in the books.

Q Do you know whether the systems are the same, or diffrent?

A In principle, I presume that there is some similarity, in that they all try to tell the truth of each transaction.

Q Even assuming that a Chinese merchant has sufficient knowledge of English, Spanish or a local dialect to enable him to read Arabic numbers and the names of articles of merchandise handled in his store, would he, in your opinion, be able to check up books of ac-

count kept according to the American or European system of bookkeeping in any of those languages?

A No, sir.

Q Why not?

A Because a person must have a very thorough knowledge of the language, as well as a very thorough knowledge of accounting, before he can check up a set of books in any language.

Q And even though a Chinese merchant were capable of checking up books of account in Chinese, and also knew English or Spanish reasonably well, would he be able to check up books kept in either of those languages if the systems of keeping books in English or Spanish were different from those employed in keeping Chinese books?

MR. FELIX: I object to the question on the ground that it assumes something which is contrary to fact, because according to the testimony of this witness the two systems are practically the same.

A I don't think so.

Q What would be necessary to equip a Chinese merchant to keep books of account in any other language than his own?

A He would be compelled to hire an expert accountant.

Q In order to equip him to do it himself, what would be necessary?

A He would naturally have to have an accountant familiar with the language in which the books are kept, and then he would have to rely entirely on the statements made by that accountant. He would be absolutely helpless himself, in my opinion.

Q Aside from a few exceptional cases of Chinese merchants

who may have been educated in English-speaking or Spanish-speaking schools, would any of the Chinese merchants in the Philippine Islands, in your opinion, be able to continue managing their business and at the same time learn how to check up intelligently books of account kept in English, Spanish, or any local dialect?

MR. FELIX: I object to the question on the ground that no foundation has been laid for it. The witness has not as yet qualified himself to testify on that point.

A I don't think he could manage his business. As I have stated, unless a manager has a thorough knowledge of the transactions which are expressed by his books, he cannot efficiently manage his business. Therefore, a Chinese certainly would not be able to know how his business was going if he had to depend entirely on a foreigner to keep his accounts.

Q State whether or not your career in the Philippine Islands has brought you into frequent contact with the Chinese merchants.

A While I was Collector of Internal Revenue I had much to do with them, and as President of the Bank of the Philippine Islands I am constantly in touch with the many Chinese clients of the bank.

Q From your knowledge of the Chinese merchants in Manila and elsewhere in the Philippine Islands, what would you say as to the number of them who are able to read and write any language other than Chinese sufficiently well to transact business in such language?

MR. FELIX: I object to the question, on the ground that the

witness is not qualified to testify as to that point and on the further ground that no foundation has been laid for the question.

A The percentage is very, very small; I don't believe it would go over one per cent.

Q Mr. Nolting, with reference to the diffierence and the difficulty of Chinese as compared with English or Spanish, would there, in your opinion, be any practical difference between the difficulties of an American attempting to learn to keep his books in Chinese while managing a business establishment in China, and those of a Chinese in trying to learn to keep his books in English or Spanish while managing his business in the Philippine Islands?

MR. FELIX: I object to the question on the ground that the witness is not qualified to testify on that point. He has only testified so far that he knows something of the differences in the systems of bookkeeping.

A None whatever.

Q Mr. Nolting, state whether or not your career in the Philippine Islands as Auditor, Collector of Internal Revenue, and President and Manager of the Bank of the Philippine Islands has brought you into contact with bookkeepers and accountants in the Philippine Islands.

A It has.

Q State whether or not, in your oponion, there are any considerable number of unemployed competent bookkeepers in the Philippine Islands capable of keeping the books of account of Chinese merchants in English, Spanish, or any local dialect.

MR. FELIX: I object to the question, on the ground that no foundation has been laid for it.

A It would be very difficult to get any number of persons qualified to do that work at the present time.

Q And with reference to the provinces and the more remote districts where Chinese merchants are doing business in the Philippine Islands, what would you say as to the possibility of their obtaining accountants to assist them in keeping their books in English, Spanish, or any local dialect?

MR. FELIX: I object to the question, on the ground that no foundation has been laid for it. The witness has not as yet established that he is qualified to testify on that point.

A In my opinion, it would be impossible.

Q Are you familiar with the terms of Act No. 2972, making it unlawful for anyone engaged in business in the Philippine Islands to keep his books of account in any language other than English, Spanish, or any local dialect?

A Yes, sir.

Q Please state, Mr. Nolting, how long it would take, in your opinion, to provide enough bookkeepers in the Philippine Islands to take charge of the books of account of from twelve to fifteen thousand Chinese mercantile establishments.

MR. FELIX: I object to the question, on the ground that it assumes a state of fact not in evidence. It assumes the fact that there not now in the Philippine Islands sufficient competent bookkeepers to take charge of and keep these books, which is something that has not been proven.

MR. GIBBS: The witness has testified that it woud be very difficult to get any number of persons at the present time who are qualified to do that work, and I am now asking him how long it would take to find enough of them to take care of from twelve to fifteen thousand business establishments of Chinese which exist in the islands.

A It would require many years. Of course, it could be done. In many, many years, that might be overcome.

Q How do the salaries of expert accountants, capable of taking charge of the books of account of merchants, compare with the salaries paid to professors of bookkeeping?

A The accountants' salaries are higher than those of the professors.

Q What salary does a bookkeeper receive who is qualified to take charge of the books of a merchant in the Philippine Islands?

MR. FELIX: I object to the question on the ground that it is immaterial.

A It depends entirely in the size of the business. It may run from ₱200.00 up to ₱500.00 a month, as a general rule, for small businesses, and from there it goes up rapidly. For instance, an accountant for a sugar central will command ₱12,000.00 a year, with house, light and fuel.

Q Mr. Nolting, even assuming that in time sufficient bookkeepers might be prepared to keep the books of account of the Chinese merchants of the Philippine Islands in English, Spanish, or some local dialect, and assuming further that the profits of the merchants would be sufficient to pay such bookkeepers, would it be poss-

ible, in your ipinion, for the Chinese merchants to continue doing business with their books of account kept in a language and according to a system which they do not understand?

MR. FELIX: I object to the question on the ground that it is based upon an erronoeus assumption.

A I don't think so.

Q Why not?

A Because, as I said, the merchant must understand his accounting. He must have an accountant. The accountant really is his right arm in his business, and if he is not in very close contact with his accountant and cannot understand thoroughly the methods that he is following, he is in a dangerous position at all times.

Q What, in your opinion, would be the effect of placing a Filipino bookkeeper in charge of the books of account of the business of a Chinese merchant?

MR. FELIX: I object to the question on the ground that the witness is not qualified to testify on this point.

A I believe that the Chinese would have to go out of business. For instance, we would start with the small tienda keeper out in the provinces, who, under the law, would be compelled to keep his books in English, Spanish or a local dialect. He would have to surrender and give up, and that being the starting point for further and larger transactions, it would sweep on through up to the very large merchants of Manila.

Q What degree of confidence should exist between a merchant or manager and the bookkeeper of a mercantile establishment, Mr. Nolting?

A Extreme confidence.

Q In your opinion, would the inspection of books and the collection of taxes from the Chinese merchants be in any manner facilitated by an attempt to enforce Act No. 2972?

MR. FELIX: I object to the question as being wholly immaterial and irrelevant; the opinion of this witness is in no way material on this point. In the second place, the witness is not qualified to testify on it.

A On the contrary. I think it would be prejudicial to the interests both of the Government and of the Chinese merchants. The amount of taxes collected would, in my opinion, be far less than if they were collected under a system whereby the Chinaman should have but one set of books.

Q Why, in your opinion, would it result in decreasing the amount of taxes which might be collected?

A Because naturally the Chinaman, not understanding the language and not knowing how to make the proper entries, would make no entry at all. Therefore, no entry being made, he could not properly prepare his returns to the Collector of Internal Revenue, and necessarily no taxes would be paid on the goods that he had sold and had not properly entered on his books.

Q And in the event of criminal prosecutions under this law, resulting in running the Chinese merchants out of business in the provinces and remote districts, what effect would that have upon the collection of the merchants' sales tax?

MR. FELIX: I object to the question on the ground that it is immaterial. As the Supreme Court has already decided in a great many cases, the expediency

and propriety of a law is something which rests with the legislative body for determination, and not the judicial.

A It would have a disastrous effect upon the collection of the sales tax, and would also destroy valuable business in the country. The Chinese are the collectors of probably three-fourths of the products of the islands in a small way. Through their little tiendas in remote places, they gather in the hemp, the copra, the tobacco, the muscovado sugar, and other products, and in turn sell the growers articles of clothing, food, etc. Therefore, as the enforcement of this law would destroy the business of the Chinaman, I am sure the revenues from taxes form that source would be far less than they are at present.

Q If the Chinese merchants, as distributors of our imported goods and as gatherers of our export products, should be driven out of business, is there any distributing and gathering organization to take the place of the Chinese merchants?

MR. FELIX: I object to the question on the ground that the witness is not qualified to testify on that point.

A There is none at present, in my opinion.

Q In the inspection by the Collector of Internal Revenue of the books of Chinese and other taxpayers, is it necessary or customary to examine the books of all taxpayers each year, or to examine the books of all taxpayers at any time?

A It is not.

Q Please explain to what extent it has been found necessary and is customary to actually inspect and check

up the sworn declarations made by merchants and other taxpayers in order to insure reasonably accurate returns by them?

A It would be impossible for the Collector of Internal Revenue to check up and audit every merchant in business in the Philippine Islands, in one year or at any one time. The method that I followed, when I was Collector of Internal Revenue, was that we would take a certain number in a certain line of business and have test checks made, or whenever we had reason to suppose that a merchant was not paying his taxes, then we would examine his books in a thorough way; but usually the statement of the merchant is accepted and taxes are collected on the returns made.

Q Did you find that an efficient method of insuring reasonably accurate returns by merchants?

A Yes, for the reason that the merchant would never know when he would be selected for a complete audit. Therefore, I found that very full returns were made, as a general rule.

Q While you were in charge of the Bureau of Internal Revenue, did you have any difficulty in finding and employing enough competent and honest Chinese accountants to make the necessary inspections of the books of Chinese merchants?

A No, sir.

Q In your opinion, would there be any difficulty in finding and employing even as many as twenty accountants, if it were necessary to do so and if a reasonable salary were offered them?

A Chinese accountants?

Q Yes, I mean Chinese accountants.

A No, I think not.

Q Do you know whether there are competent Chinese accountants, capable of inspecting the books of Chinese merchants, who may be had from Hongkong or Shanghai?

A I am quite sure that if the proper salary were paid, you could get any number of efficient Chinese from Hongkong, Shanghai, or other places in China.

Q Mr. Nolting, what, in your opinion, would be the best method to insure the collection of all taxes and income taxes from Chinese merchants, and from all other merchants, for that matter?

A I would say that the best method to pursue in order to assure the collection of taxes would be to register the different books of account with the justice of the peace of the district in which the principal business is carried on.

Q And what about stamping the books?

A To register and to certify, of course, which means stamping, and to describe the number of pages that the books contain.

Q In what way would such registration and stamping insure the collection of all taxes?

A If the law would further provide that the books should not be destroyed inside of five or ten years, they would be always subject to examination by experts, and would be a record which would be perpetual, you might say—or would remain in existence as long as might be necessary—of the business, for review by the Collector of Internal Revenue.

Q In your experience as Collector of Internal Revenue of

the Philippine Islands, what did you ascertain with reference to the honesty of the Chinese merchants in the declaration of their sales?

MR. FELIX: I object to the question, on the ground that the witness is not qualified to testify on this point and on the further ground that no foundation has been laid for the question.

A What do you mean, Mr. Gibbs Do you mean how they have compared with the merchants of other nationalities in making their returns?

Q Yes.

A I find that they compare very favorably with other nationalities in that respect.

Q In your experience as Collector of Internal Revenue, did you find that there was any greater necessity for careful inspection of the books of the Chinese merchants than for such inspection of the books of other merchants?

MR. FELX: I object to the question on the ground that it is immaterial. It is the law-making body, and not this witness, which has the power of determining the expediency and propriety of a law.

A No, I found no reason why they should be given more severe test checks than others.

Q Mr. Nolting, assuming, for the purposes of this question alone, that, as has been suggested by the fiscal from time to time in his cross-examination of Chinese witneses, the officials of the Philipine Government should enforce Act No. 2972 in such manner as to permit the Chinese merchant to keep books of account in Chinese characters for his own information, in addition to books of account in English, Spanish, or

some local dialect, would that, in your opinion, relieve the Chinaman to any considerable extent of the burden and damage which would result to him from the enforcement of that law?

A I believe that would be a most dangerous practice. It would encourage the keeping of two sets of books, which is something that should be avoided in every way. Books of account are supposed to tell the truth. The original books should be kept in the language of the merchant, as he understands that language, and to have subsidiary books, purporting to be a true record, in another language that he could not understand would be dangerous, and would probably subject the merchant to prosecution. It was with that end in view, of having but one set of books, that I stated a few minutes ago that the registration of the account books should be required before any entry has been made in them.

Q State whether or not the minutes of meetings of stockholders and directors of Chinese corporations are a necessary part of the books of account of such corporations.

MR. FELIX: I object to the question on the ground that it is immaterial.

A They are absolutely necessary, and you will never find an expert accountant or auditor making his reports on the audit of a business without examining the minutes of the board of directors, if it is the business of a corporation. That would also apply to the correspondence. Many times it is necessary to refer to the correspondence to explain a transaction when a complete audit is made of the accounts of a concern.

Q Mr. Nolting, taking into consideration the business characteristics, habits of economy, and the life in general of the Chinese merchants, and the correspoding habits and characteristics of the English, American, Spanish or Filipino people, what would you say as to the probability of the Chinese employer and the Chinese employees getting along amicably with foreign bookkeepers and foreign employees?

MR. FELIX: I object to the question on the ground that it is immaterial, and for the further reason that the witness is not qualified to testify on that point.

A I don't believe that that would be possible. The confidence which is a first requisite would never be present.

CROSS-EXAMINATION BY MR. FELIX:

Q Mr. Nolting, you understand Spanish, do yo not?

A Yes, but I prefer to testify in English.

Q And you not only understand Spanish, but you also speak it; isn't that so?

A I speak it quite a bit.

Q And you can also write it?

A Not correctly.

Q As Director of the Bureau of Posts, is it not true that you have noticed, Mr. Nolting, that the addresses on the communications mailed to Chinese were in languages or dialects other than Chinese?

A Yes, and I also know that they had Chinese interpreters in the post office to correctly read the Chinese characters, so that the proper distribution of the mail would be made.

Q You don't understand the question. The question is

this: as Director of the Bureau of Posts, is it not true that you have noticed that the addresses on the communications mailed to Chinese were in languages or dialects other than Chinese?

A Do you mean on Chinese letters?

Q Yes, that the addresses on Chinese correspondence were written in Spanish, English, or some local dialect, and not in Chinese?

A The correspondence from China has usually come addressed in Chinese characters, and also, in many cases, in other languages—Spanish or English, or whatever it might be.

Q And likewise the addresses on the envelopes mailed by Chinese to outlying points in the Philippine Islands were in English or Spanish, and not in Chinese; isn't that so?

MR. GIBBS: I object to the question, for the reason that it is impossible for any person to know the contents of a letter which passes through the post office, or as to whether it is signed by a Chinese or by some other person.

MR. FELIX: The question does not refer to the contents of a letter in any way, but refers only to the addresses appearing on the envelopes.

A Yes, letters for delivery in the Philippine Islands usually carry the Spanish or the American address.

Q And the same is true with respect to letters sent to China; isn't that so?

A Perhaps so, but the envelopes also carried the Chinese characters when they were sent to foreign countries.

Q In what way did you familiarize yourself with the met-

hods of accounting followed by Chinese merchants in the Philippine Islands?

A By seeing books of account kept in Chinese and having the same explained to me.

Q Among all the merchants in the Philippine Islands, you probably didn't see more than 500 sets of their books; isn't that so?

A That is true.

Q Not more than that?

A Probably not.

Q Generally speaking, it is not the manager of mercantile houses, especially of the large houses, who keep the books, but they rely upon information furnished them by their bookkeepers or treasurers; isn't that so?

A That is true; they rely on the person who has charge of the keeping of their books. As I said, is taken those there factors to run a business in an efficient way: capital, management, and accounting. In some places, you might find a manager who was able to supervise his accounting, but if the business were of any magnitude, he could not do so. Therefore, he must have a person in his confidence as his accountant.

Q In the case of these small businesses, such as these corner tiendas run by the Chinese, they do not, practically speaking, need any intricate or involved bookkeeping systems, do they?

A They would need an accountant under this law, if it is enforced.

Q In a word, it would be sufficient for them to enter in

their books their purchases and sales of merchandise, would it not?

A If they didn't have sufficient knowledge of the language, they couldn't even make those entries.

Q My question did not touch upon the question of the knowledge of the language, but was whether a small business, of the class of the sari-sari shops, would need any books other than a book showing the purchases and sales of merchandise.

A I can't see how I can answer that question without involving the language if we are discussing the provisions of Act No. 2972.

Q We are not now discussing the provisions of Act No. 2972. My question is simply this: is it not true that a business as small as that of these sari-sari shops would not require anything more than a book showing the purchases and sales of merchandise, whatever might be the language in which it were kept?

A That is true; the entries would be simple.

Q And for these businesses it would not be necessary to employ expert bookkeepers; isn't that true?

A If the merchant was to keep out of jail, I think it would be necessary.

Q With reference to businesses which require that their accountants or bookkeepers be experts, can you tell the commissioner whether persons who have acquired their experience of accounting by mere observation of the method of making entries or keeping books would be capable of keeping the books of such businesses, that is, those which would require the employment of bookkeepers?

MR. GIBBS: That question is wholly unintelligible.

MR. FELIX: I will change the question.

Q Supposing that the business of a mercantile firm is such as to require the employment of bookkeepers, could the books be kept, or the position of bookkeeper or accountant be filled, by persons who had acquired their entire experience in bookkeeping by merely observing the making of entries in the books during the course of sales of merchandise in a given business?

A I don't quite understand that question, but if you mean to ask whether a person would be competent to take charge of a set of books after merely seeing entries made, I should say no. It requires experience as a bookkeeper before he can make the proper entries.

Q And in order to be a bookkeeper and take charge of books, special study is required, Mr. Nolting. Isn't that true?

A Special study and experience.

Q You have testified that one per cent. of the Chinese merchants are not capable of keeping their books in a language other than Chinese. Did you not say that?

MR. GIBBS: I object to that question—he didn't say anything of the kind. I object to the question because it is based upon a false assumption—this fact being fully known to Mr. Felix—, this assumption being exactly contrary to what the witness has testified. The witness has stated that there were not more than one per cent. of the Chinese merchants who could check up or keep their books in any language other than Chinese.

MR. FELIX: I don't believe Mr. Gibbs has given full attention to the question.

A No, I didn't .

Q What percentage, then, of the Chinese merchants did you say would be able to keep their books in a language other than Chinese?

A I said that in my opinion not more than one per cent. of the Chinese could keep their books in English without the assistance of foreign accountants. I didn't use exactly those words—if you will refer back to my former answer. I think that will be the best reply to your question. I think I made it sufficiently clear there to explain my views.

Q Can you give us again your point of view or your opinion as to this question?

MR. GIBBS: This is an infraction of the usual rules of procedure, to ask a witness as to what he has testified to. The proper procedure is to refer back to his answer as noted in the record.

MR. FELIX: According to the rules of evidence, it is perfectly proper for me to ask the question again.

Q Mr. Nolting, will you please state to the commissioner now what would be the percentage of Chinese merchants who could keep their books, not only in English, but also in Spanish or in any local dialect?

A I said that in my opinion there were not over one per cent. who could keep their books in a language other than Chinese.

Q Upon what do you base that statement?

A Upon general observations of transaction that passed through the Bureau of Internal Revenue and through the Bank of the Philippine Islands.

Q But on those occasions, Mr. Nolting you didn't examine them with regard to their knowledge of English, Spanish, or any local dialect, did you?

A No.

Q And, as a matter of fact, you could not so examine them because you yourself do not speak any local dialect; is that not true?

A That is quite right.

Q Didn't you testify before, Mr. Nolting that in the Philippine Islands there would not be a sufficient number of bookkeepers to take charge of the books of the Chinese merchants and keep them in English, Spanish, or a local dialect? Didn't you state that?

A I did, as my opinion.

Q What have you done to verify the number of bookkeepers in the Philippine Islands, in order to make that statement which you have made?

A I made it because I am daily in receipt of applications from young men for employment in positions in the bank, and I know, after discussing their qualifications, that they wouldn't be fit to keep a set of books.

Q So that your knowledge is based upon the fact of the test to which you have subjected those who have applied to the Bank of the Philippine Islands for employment; isn't that so?

A Not entirely so.

Q Upon what else is it based?

A We are interested in different enterprises, and I am more or less in touch with the system of accounting and the books of account in these different enterprises, and I have always found that a shortage exists of bookkeepers to carry on the work efficiently unless they are given considerable experience and training.

Q Is it not true, Mr. Nolting, that in the vast majority of

business of any size in the Philippine Islands they already have bookkeepers in their employ?

A Certainly; they can't conduct their businesses without keeping books.

Q And you have not examined or subjected to test that very numerous body of bookkeepers who are employed in the various mercantile establishments in the Philippine Islands; isn't that true?

A Certainly I haven't.

Q Is it not also true, Mr. Nolting, that in many cases, when you were Collector of Internal Revenue, you found that the merchants didn't pay all that they should pay, many times not on account of bad faith, but through ignorance on their part of what they should pay?

A That is true, and I also found that in some of the cases the nonpayment of taxes was intentional, and in those cases you would usually find two sets of books involved.

Q Now, then, Mr. Nolting, that being the case, how can you testify that the mere declaration of the taxpayer would be sufficient in the great majority of cases?

MR. GIBBS: I object to the question, on the ground that it is based upon a false assumption, the question not expressing the true meaning of the answer of the witness.

A It is sufficient until it's found to be incorrect.

Q Don't you believe, Mr. Nolting, that if the mere declarations of the taxpayers were considered sufficient or were accepted, in a great many cases the taxpayers would fail to pay, if not through bad faith, then through ignorance of what they should pay?

MR. GIBBS: I object to the question, on the ground that it is based upon a false assumption, which is that if the books of the Chinese merchants were kept in Chinese, the mere declarations of the Chinese merchants would necessarily have to be accepted by the Collector of Internal Revenue.

A No.

Q Why not? Will you explain?

A I think the taxpayer desires to pay his taxes, and it is quite possible that through ignorance he would not pay all that was due the Government.

Q How, then, if through ignorance the taxpayer fails to pay all that he should pay, and if the Government should not go beyond approving and accepting the return that the taxpayer made, don't you believe that the Government would fail to collect that portion which through ignorance the taxpayer didn't pay?

A Certainly, if they made no examination.

Q Isn't it true that the banks themselves, which have expert accountants in their employ, have been forced to pay a penalty on account of not having paid all that they should have paid in taxes?

A That occurred due to an interpretation of the law.

Q Don't you believe, Mr. Nolting, that it should not be left to the taxpayer to judge as to what he should pay, the Government confining itself to accepting and approving the return of the taxpayer?

A I certainly think the Government ought to insist on knowing whether the proper taxes were paid or not.

Q Referring to that part of your testimony in which you stated that it was most dangerous to allow a merchant to have two sets of books of account, do you

mean to say that if one set of books kept in Spanish, for example, contained the same entries as another set kept in Chinese, that would be dangerous, and if so, in what would the danger consist?

A It would be absolutely dangerous to allow two sets of books to be kept, because entries might be might in one set that would not be made in the other. The taxpayer would always have the excuse of having two sets of books, and would probably make entries in the set for his own use which would not appear in the other, which would be the set upon which he based his returns to the Government.

Q Now, then, Mr. Nolting, if the taxpayer were acting in good faith, what danger would there be in keeping two sets of books, if both sets were identical?

A It would be an unnecessary expense, and probably one set of books, kept in a different language, would be entirely foreign to the proprietor.

Q Why do you believe that confidence could not exist between Filipinos and Chinese?

A Well, the difference in language, customs and other things would, to my mind, make it impossible for them to have that confidence which is necessary.

Q You are an American, Mr. Nolting; isn't that so?

A Yes.

Q In the bank of which you are the manager there are a great many Filipinos, are there not?

A Yes.

Q You have confidence in many of them, have you not?

A Yes.

Q And nevertheless, Mr. Nolting, you have not the same customs and habits as your Filipino employees have?

A No, but that is not a case of such a contrast as we were making when I answered the other question. The other answer which I gave was as to the contrast between the Chinese and the Americans and English and Filipinos, etc.

Q What is the contrast that exists between the Chinese and the Filipinos and between the Americans and the Filipinos and the Spaniards and Filipinos, etc.? Will you explain what that contrast consists of?

MR. GIBBS: Do you mean between the Chinese and the Filipinos on the one hand, and between the Chinese and the Americans on the other? The question is not clear. If you mean the contrast between the Chinese and the Filipinos, on the one hand, and the Americans and Filipinos, on the other hand, the question is clear. Will the reporter please read the question?

(The reporter complied.)

MR. GIBBS: The question is not clear.

Q What is the contrast that exists between the Chinese and the Filipinos, on the one hand, and the Americans and the Filipinos, on the other hand? Will you explain as to that?

A There is quite a contrast.

Q Will you please explain the contrast in detail?

A The Chinese, as a usual thing, conduct their busines with Chinese help. They bring the young boys over from China, and they start a boy in probably at scrubbing the floor and working in the kitchen. He gradually becomes a salesman. From salesman he is promoted other and higher positions. You don't find that with the Filipinos or the Americans.

Q Is that the only thing that impedes or makes impossible the existence of mutual confidence between the Filipinos and the Chinese?

A In the matter of the confidence that is necessary between the accountant and the Chinaman, yes, because he brings a young boy over from China and he starts him in, and he gradually works up into higher positions. Consequently, he has the entire confidence of the proprietor, or of the company, and the same confidence could never, in my opinion, be reposed in a stranger coming in and keeping his books in a language that he doesn't understand at all and who probably has customs that are entirely different from his.

Q Can you state with certainty, Mr. Nolting, that in all, or a great majority, of the Chinese establishments in the Philippine Islands, the employees of the owners of those establishments have lived with and have been educated by those who employ them ever since they were young boys?

A In my opinion, most of the large mercantile houses handle their business in that way.

Q But you can't state that with certainty; it is merely an assumption on your part. Isn't that true?

A It is my opinion.

Q Upon what do you base that opinion?

A Upon what I have been told by people who know.

MR. FELIX: In view of the last statement of this witness, I ask that the entire testimony of this witness upon this point be stricken from the record, on the ground that it is purely hearsay.

MR. GIBBS: I object to the granting of the motion,

for the reason that the answers were brought out on cross-examination and not upon direct examination.

MR. FELIX: It is true that the answers were given to questions put upon cross examination, but these questions and answers are intimately related with the testimony given by this witness on direct examination.

REDIRECT EXAMINATION BY MR. GIBBS:

Q Mr. Nolting does the difference between the customs of the Chinese and those of other nationalities refer only to the Filipinos, or to practically all other nationalities?

A To practically all other nationalities, was what I intended to say.

Q Do you know what the customs of the Chinese are with reference to maintaining their employees in the store where they work, as compared with the customs of the Filipinos and those of other nationalities in that regard?

MR. FELIX: I object to the question, on the ground that no foundation has been laid for it and that it is wholly immaterial.

A I know that the Chinese are clannish, and that when they go to foreign countries they have their own districts and they follow out their own customs. In the United States, in almost every city where any number of Chinese exist, you will find what they call "Chinatown", and the Chinese live there almost exclusively.

Q Would the Chinese merchant, in your opinion, have much greater confidence in Spaniards, or Americans, or Englishmen, or Frenchmen, or any other foreig-

ners who might be forced upon him as bookkeepers, than he would in the Filipinos?

A Not a bit; they would all be in the same category. The Chinaman, as I understand it, must have his Chinese bookkeeper to be sure that his accounts are kept properly and as he desires.

Mr. Felix declined to recross-examine the witness.

There being no further questions, the witness was excused, and the hearing was then, at 4:20 o'clock p. m., continued until Tuesday, September 11, 1923, at 2:30 o'clock p. m.

Tuesday, September 11, 1923.

The hearing was resumed at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

T. H. Pardo de Tavera, a witness called on behalf of the petitioners, as sworn and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q Please state your name, age, residence, and occupation.

A T. H. Pardo de Tavera, married, of legal age, residing at No. 186 Calle Buenavista, Santa Mesa, Manila, Doctor of Medicine, at present Chief of the Philippine Library and Museum.

Q What is your nationality?

A Filipino.

Q How many years have you lived in the Philippine Islands?

A 66 years and some months; since my birth.

Q What official positions have you occupied in the Philippine Islands?

A During the time of the Spanish Government, I was a professor in the University of Manila and Hospital Physician, and later, during the time of the American Sovereignty, I have been a member of the Philippine Commission, and then the position which I am at present occupying.

Q Have you had any connection with the University during the American occupation?

A Yes, some time ago I was appointed Professor of Languages, a new position which was created.

Q And what languages do you speak?

A As to speaking, I speak French, Spanish, English, a little Italian, and Tagalog, and I know some other European and Malayan languages to read and understand them more or less, but not really to speak them correctly.

Q Have you read Act. No. 2972, Mr. Tavera?

A The act which refers to commercial books of account?

Q Yes.

A Yes, sir, recently.

Q During your residence in the Philippine Islands, what opportunities have you had to know the Chinese merchants and to inform yourself as to their customs?

A Really, I haven't gone into their customs, but I have known something of them, because it struck me as odd that in their business and in their daily lives they should follow practices so different from those others. The first thing that arrested my attention was the system which they followed in their arithmetical operations. We perform them with pencil and paper and they perform them with a calculating

apparatus, without the necessity of marking down anything on paper.

Q Do you know what this instrument is called with which they do their calculating?

A In Europe, in French, it is called an abacus. I don't know what they call it in Chinese—I haven't paid any attention to that.

Q Mr. Tavera, during your residence here, what opportunities have you had to inform yourself as to the ability of the Chinese merchants to read or write English, Spanish, or any local dialect?

MR. FELIX: I object to the question on the ground that no foundation for it has been laid.

A Well, among the upper classes, the upper class of Chinese merchant undoubtedly understands English or Spanish, and he has some idea of that accounting system, but the great majority of the Chinese never go into it, and they haven't even any idea of it.

Q But, confining ourselves now to their ability to read or write any language other than the Chinese, with the exception of the few who have been educated in English or Spanish schools, are there Chinese who can read or write English or Spanish well?

MR. FELIX: I object to the question on the ground that no foundation for it has been laid and on the ground that up to now, so far as appears from his testimony, it has not been shown that the witness has lived among the Chinese and that he is qualified to testify on that point.

MR. GIBBS: It is not necessary for a man to live with another in order to understand him.

A No.

Q Outside of the few exceptions of Chinese merchants who may have been educated in English or Spanish schools, what would you say as to the ability of the Chinese merchants to check up or understand books of account kept in English, Spanish, or any local dialect?

MR. FELIX: I object to the question, in the first place, on the ground that it is based upon an assumption not established in the record, which is that there are only a few Chinese who have studied in the public schools, and there is nothing shown to demonstrate this; in the second place, I object to the question on the ground that no foundation has been laid for it, inasmuch as the witness has not so far demonstrated the degree of his association with the Chinese or his competency in the matter of Chinese bookkeeping, and he is therefore not qualified to testify as to this question.

A Well, it is inability, rather than ability, because not only are those books written in a language with which they are not familiar, but the method followed is wholly different. The Chinese, with the characters which their outlines represent, use them to express ideas, and the words of a foreign language have other meanings entirely, and therefore they find themselves lost because their writing is expressive of ideas, and therefore they would practically have to change their mentality, and that is something that most of them don't try to do.

Q Do you know how many schools or colleges there are in the Philippine Islands in which bookkeeping is taught?

A Outside of five or six educational centers which we have, so many of these small schools have sprung up that I don't know really how many there are; but in any event they are not numerous, or at least their output, the bookkeepers whom they turn out, are not many.

Q Can you say, more or less, how many students graduate from the bookkeeping departments of these schools and colleges each year?

MR. FELIX: I object to the question on the ground that the witness is not qualified to testify on that point.

A Really, I couldn't say what number, no.

Q So far as you know, is there any considerable number of competent bookkeepers unemployed in the Philippine Islands?

MR. FELIX: I object to the question on the ground that no foundation has been laid for it and furthermore on the ground that the witness has not in any way shown his competency to testify on that point.

A I don't know.

Q In your opinion, Mr. Tavera, would it be possible for the great majority of Chinese merchants to continue carrying on their business if Act No. 2972 were enforced or carried out?

MR. FELIX: I object to the question, in the first place, on the ground that the witness should testify as to facts and not express his opinions; in the second place, on the ground that the witness has not so far shown himself to be qualified to testify on that point; and in the third place, on the ground that Act No. 2972, even though its operation has been suspended, is still in effect and has not been revoked.

A It would be possible if they could find bookkeepers to keep their books and if they could check up what their bookkeepers did.

Q That is with reference to their ability, but what would you say with regard to the profits being sufficient, in the cases of many of these small businesses, to pay the salary of a Filipino, American or Spanish bookkeeper—whether those merchants who conduct small shops or stores would be able to pay the salary of a foreign bookkeeper?

MR. FELIX: I object to the question on the ground that it refers to a hypothetical case, that is, as to whether the Chinese merchants running tiendas or small shops could afford to pay foreign bookkeepers, and furthermore because the expediency or wisdom of a law is a matter for the determination of the legislative branch and not the judicial.

A I don't believe that the majority of them could afford to pay the salary of a foreign bookkeeper.

Q In your opinion, Mr. Tavera, would the enforcement of this Act No. 9272 result in facilitating the inspection of the books of account of the Chinese merchants?

MR. FELIX: I object to the question on the ground that the witness is not qualified, at least so far as appears from the record, to answer it.

A Naturally, it would facilitate it if they kept those books, but the question is whether they could keep them.

Q Bearing in mind what you have already testified as to the inability of the Chinese to keep their books in a language other than Chinese, it is your opinion that the enforcement of this law would result in fa-

cilitating the inspection of the books of account of the Chinese merchants?

MR. FELIX: I object to the question on the ground that it has already been answered.

A That if they kept their books as the law requires, it would facilitate the inspection?

Q In view of the fact already testified to by you, that the great majority would not be able to keep their books in a language other than Chinese, the question is whether in view of that circumstance the enforcement of this law against the Chinese would, in your opinion, facilitate the inspection of their books of account.

A I don't believe that that law could be complied with by the great majority of the Chinese.

MR. FELIX: I move that the answer of the witness be stricken out as being merely his opinion, which cannot serve as evidence.

J Mr. Tavera, at the request of Messrs. Gibbs and McDonough, you have issued a certificate as to the local dialects of the Philippine Islands. I call your attention to this certificate and I ask you if it bears your signature and if this certificate was issued by you. (Handing the witness a document.)

Q Mr. Tavera, are the facts set forth in this certificate true?

A To me they seem to be perfectly true, and I consider them true. They are taken from the Census, and this was supported by data obtained from Dr. Bayer and others who have made a study of the anthropology and languages of the Philippine Islands.

MR. GIBBS: I offer in evidence this certificate, Exhibit F.

MR. FELIX: I reserve the right to object to the admission of this certificate in evidence until after I have cross-examined the witness.

CROSS-EXAMINATION BY MR. FELIX:

Q Mr. Tavera, you have never really engaged in business; you have never been a merchant, have you? You have rather been a professional man?

A I have been a professional man, but I have also taken part in commercial enterprises.

Q But your participation in those commercial enterprises has not been in the practical direction of them, but as a stockholder and without managing the business?

A I once managed a business, that of the Fabrica de Hielo de Manila; I was the director and manager of that business for several years, and during that time I was directly responsible for what I did. I was afterward a member of the boards of directors of two companies, and as such I had to do with the accounting and with what went on in those companies although not so directly as the manager himself.

Q As a member of the boards of directors of those companies, you have not had any direct connection with the commercial operations conducted by the companies of which you were a director nor with the customers of those companies; isn't that true?

A No, not directly.

Q In a word, you didn't take any part in those operations?

A Not directly, no, not in those mercantile companies, but when I was manager of the Fabrica de Hielo I knew how my business was being conducted and how the

books were kept, and therefore I say that I understand something of bookkeeping.

Q Have you studied bookkeeping?

A No, sir, I haven't studied it.

Q Have you made any special study of bookkeeping?

A No, sir; I only knew that the Code required me to keep three books, the cash book, the journal, and the ledger. I had efficient employees, and I had sufficient education to enable me to inform myself as to the entries by examining them and to decide whether they were properly or improperly made, except when a purely technical question arose, and then the auditors would come in and discover the fault or error.

Q Do you care to say, Doctor, what opportunities you have had, if you have had any, to inform yourself as to the system of bookkeeping followed by the Chinese?

A I have already stated that I didn't have such practical knowledge of their system as would enable me to describe it, but from what I have been told I have learned that it was different from ours, and naturally that harmonized with their character and their customs, which appertain to a mentality and to a civilization which are wholly different from ours.

MR. FELIX: I move that the testimony of the witness with regard to this point be stricken out, on the ground that it is hearsay.

Q Now, then, you yourself, of your own personal knowledge, don't know what the Chinese system of bookkeeping is?

A No, sir, of my own knowledge, no.

Q Referring to this instrument which the Chinese use, called an abacus, is it not true that in the primary

schools the children are taught to count, if not by means of a table, by a means similar to this instrument which is called "abacus" in French?

A No, sir; really I don't know, but that must be for a very primitive, a very rudimentary, calculation, because as a matter of fact the Chinese, with that instrument, perform all the operations which we perform with pencil and paper.

Q Do you mean to say that merely because in the method of proving the operations in our system of calculating we use pencil and paper, and in their method they employ that instrument called "abacus", the system of accounting is different? Is that what you mean to say?

A I have spoken of that particular detail, and I have also referred to the particular point of the singularity of their writing, as a result of which their general system is different from ours, or at least in those cases the systems are wholly different.

Q Isn't it true that that instrument called "abacus" is rather rudimentary in form, but that it amounts to the same thing as the adding, substracting, multiplying and dividing machines which are now used in business?

A Probably the invention of those machines was brought about by reason of the Chinese instrument, because that instrument demonstrated that arithmetic, which we thought was a wholly abstract science, was something wholly material inasmuch as mathematical operations can be performed by a machine instead of by the use of the intelligence.

Q So that today, having these adding machines and hav-

ing employees, and his table which the Chinese use having been the basis or the possible basis of these machines, as you say, there would not now be any difference in the systems of accounting, inasmuch as the means of adding, subtracting, multiplying and dividing are identical; isn't that true?

A I don't say that they are identical. There is no doubt that the automobile is the final product of evolution from the cart, and there is no similarity between them—they are different things entirely. Furthermore, as to the cost of the machines, an abacus will cost two or three or four pesos, and adding machines are expensive and it takes a man with money to buy them.

Q Doctor, I am not referring to the price or cost of the machines; I am referring to the accounting system. Is it not true, for example, that to indicate the figure "4" all that is necessary is to pull down four of those rings on the abacus, and to make the figure "4" on the machine all that is required is to press the key of the figure "4" with the hand?

A That is true, the difference being that the adding machine performs all the operations when the man presses the key of the figure, whereas the abacus serves merely as an aid to the man's memory, because when he leaves the instrument there is nothing written down and he must rely on his memory; so that is the difference. The abacus itself does not leave any record; it merely serves to assist the man in performing the operation.

Q Do you know how to manipulte the abacus?

A The manipulation itself, I do not.

Q Isn't it true, Doctor, that when a man is adding on the abacus, if it is a "5" he puts down 5, and if it is a "7" he puts down 7, following which the total appears?

A Yes, for the man who has performed the operation, but if another man comes along and sees it, he doesn't know what the first man has done.

Q Wouldn't the total appear?

A The total means nothing; he wouldn't know what operation had been performed, whether it was addition, subtraction, multiplication, or division. A man performs a certain operation, then he leaves the abacus, and whoever follows him doesn't know what the operation is that he has performed.

Q But won't the total appear?

A The total means nothing; we wouldn't know if it was addition, subtraction, multiplication, or division. It is necesary that the man who performed the operation be present.

Q Is it not true that after an operation has been performed on a piece of paper, all that is known is the total, or the result of the operation?

A Yes, sir.

Q And that the operations by which one has arrived at a total or at a result are of no value; isn't that true?

A They are useful for the verifying of the operation.

Q But once the operations are made and the result obtained, the methods by which the person has arrived at that result or that total are no longer of any value, are they?

A No, that is true.

Q Practically speaking, you do not maintain commercial

relations or relations of friendship with the Chinese, with the exception of a few cases; isn't that so?

A The truth is that I was born and I have lived on the Escolta, in Binondo, which was formerly a Chinese center entirely, and I used to enjoy very much going into the Chinese shops, ever since I was a little boy and observing how they worked and how they kept their books, without knowing what they were writing, although my observations were assisted by some explanations which I received. Later on, through reading, and by the opinion which I myself have formed of things Chinese—these are the things which form the basis for what I am now saying.

Q You have not as yet answered my question, Doctor. My question was as follows: is it not true that you have not maintained, nor do you now maintain, commercial relations or relations of friendship with the Chinese, with the exception of a few cases?

A That is true.

Q And seeing the books of account was the same thing to you as seeing a chair, an inkwell, or any other object of that nature, because when you saw them you knew what their contents were?

A No, it wasn't the same, but it was the same as though I had seen a book of account, or a book on religion, or a book on iron smelting; that is true.

Q In view of your scant relations with the Chinese, you have not subjected them to any examination in order to determine what degree of aptitude or knowledge the Chinese merchant in the Philippine Islands have in general for the keeping of books under our accounting system; isn't that so?

A I don't know what degree of knowledge they have. This question of keeping books in the English language, how, or not in Chinese, is not a new one. During the time of the Spanish Government, they tried to put into force the same law, and at that time the question was discussed at length. I was at that time a friend of some very important Chinese here who are now dead, such as Chino Buncan, Chino Palanca, Chino Syyap, and others who were very important, and those men, who had money, complained bitterly and told me that it was an absolute torture for them and a great evil to be obliged to keep their books in Spanish. That is a very old and much-discussed question here.

MR. FELIX: I move that the answer be stricken out as not being responsive.

Q Doctor, please answer my question. My question was as follows: Is it not true that, due to the scant relations which you have had with the Chinese merchants in general, you have never subjected those Chinese merchants in the Philippine Islands to any test in order to ascertain their degree of aptitude or their knowledge of our system of bookkeeping?

MR. GIBBS: I object to the question on the ground that it is based upon a false assumption, which is that the witness has not had intimate relations with and knowledge of the Chinese.

MR. FELIX: My question does not assume that the witness has not had intimate relations with some of the Chinese.

A Really, I have not subjected them to any test, and my former answer was for the purpose of demonstrating

the basis of my answers, as I did not give my answers as being my impressions, but as being opinion that I had formed from the knowledge of those facts furnished me by the Chinese in the time of the Spanish domination.

Q Is it not true, Doctor, that throughout the Philippine Islands, even in the most remote barrios, there are government schools in which bookkeeping is taught?

A Bookkeeping, I believe not; arithmetic, yes.

Q Is it not true, Doctor, that in the principal towns of every province in the Philippines, and in the provincial capitals, there are high schools, in addition to the private schools, in which mathematics are taught to a sufficient degree to enable one to keep books of account?

A Arithmetic, at least that part of mathematics which is so called, is the basis of bookkeeping, but a man can be a superlative arithmetician and still not know bookkeeping.

Q Please answer my question, Doctor.

MR. GIBBS: He has answered it.

Q Is it not true that in the high schools, to say nothing of the countless private schools which exist in the Philippines, mathematics is taught to a sufficient degree to enable one to keep properly the books of account of a business house?

A It is true that that is one of the requisites in learning bookkeeping, to know mathematics, provided, of course, that they learn bookkeeping afterward. That was what I meant to say, that it is the basis, but it is not bookkeeping. A man may be a good accountant and still be only a fair arithmetician.

Q Have not you, who were born in the Philippine Islands and who have lived a long time in the country, observed in the course of your daily life that the Chinese, and above all the merchants who are engaged in the retail business, very soon come to understand and be understood by the customers with whom they deal?

A Yes, sir.

Q Is it not also true, Doctor, that those shops called "sari-sari shops," those shops which you find on most of the street corners, don't require either a set of books of account or the services of a bookkeeper, because anyone could keep the simple books which they need?

A It is true that they are simple for the man who keeps them, but the Chinese who owns the business doesn't understand them, he is left outside of his business.

Q Didn't you just say, Doctor, that the Chinese easily learn the local language after a short period of contact with their customers?

A I don't remember having said that. I said that they understand each other, but that doesn't mean to say that they understand the language. I meant to say that they maintain good relations, and, as a matter of fact, it is strange that with four words or so they are able to establish such good relations. I didn't refer to the language, understand me, because two persons can understand each other without knowing the language well, and sometimes two who understand the language very well cannot agree. This means, therefore, that the Chinese easily establish a current of good feeling between themselves and their customers. That was the meaning that I meant to give to the word "understand."

Q Referring now to the language, have you not observed how the Chinese vendors of "sari-sari" easily converse with their Filipino customers—have you not observed that?

A Yes. sir.

observed that?

A Yes, sir.

Q And these conversations between the Chinese vendors of "sari-sari" and their Filipino customers are not carried on in Chinese, but in Spanish or Tagalog, or in the dialect of the locality?

A Yes, sir, because it is one thing to speak and another thing to write. A chinese, for instance, offers a piece of cloth to a customer and says, "That good." In writing, "that good" means nothing, because the "that," which is the cloth, is not there; and the same thing is true when the customer says, "I want this," and points it out with the finger.

Q Do you mean to say, Doctor, that it is necessary for one to be a man of letters in order to keep books of account, or that it is necessary to know a language to perfection in order to keep books of account?

A No, I didn't say that he had to be a man of letters or that he had to know the language well; I merely said that it is easier to speak a language than it is to write it, and above all in business, because the articles which serve as the basis of the transaction are present.

Q With regard to these traveling peddlers, have you not observed them sell goods on credit on some occasions?

Q. Yes.

Q And in those cases the peddler receives from the customer a chit for the goods which he takes; isn't that true?

A Yes, sir.

Q And those chits for those goods are not written in Chinese, but in the language of the purchaser who gives the chit, which may be Spanish, English, or a local dialect?

the chit, which may be Spanish, English, or a local dialect?

A Yes, sir, that is true, but I want to say one thing: that doesn't mean that the Chinese understands it, but rather that the Chinese has confidence in the customer, because upon that is based the business which the Chinese do. It may be that they themselves do not inspire confidence, but their customers inspire confidence in them.

Q Referring to this exhibit marked with the letter "F", you have not prepared this exhibit; isn't that true?

A I dictated it to my stenographer, and I had before me at the time the official data issued by the Census Bureau.

Q You did not form part of the Census Bureau at the time this was made up?

A No, I didn't form part of the Census Bureau.

Q And you have had no connection with the Census Bureau since it was prepared?

A I can say that I did have some connection with it, that is I had no direct connection, but for a long time past I have given the benefit of my studies toward increasing the knowledge of the Philippine languages, and when I mentioned before that the Census had availed itself of the studies of Dr. Bayer and others, I didn't care to say who the others were.

Q Referring again to this Exhibit F, wherein, opposite the name of a dialect, appears a number or figure corresponding to the number of inhabitants who

speak it, in the preparation of this Exhibit F you didn't mean to say, for example, when you show Tagalog as spoken by 1,789,049 inhabitans, that they are the only ones who speak Tagalog, because others such as the Ilocanos, Bicolanos and Pampangos also

are the only ones who speak Tagalog, because others such as the Ilocanos, Bicolanos and Pampangos also speak Tagalog; isn't that true?

A Yes, sir.

Q And that is true of the others also?

A Yes, sir.

MR. FELIX: I have no objection to the admission of Exhibit F, although I maintain that it is wholly irrelevant and immaterial to the case at issue.

REDIRECT EXAMINATION BY MR. GIBBS:

Q One more question, Doctor: referring to the efforts of the Spanish Government to pass a law similar to Act No. 2972, please tell us what happened to that proposed law.

MR. FELIX: I object to the question on the ground that no foundation has been laid for it. The witness has not as yet shown himself qualified to answer that question, nor has he stated what relations he has had with business so far as the proposed law is concerned.

A The law was not put into effect.

Q Doctor, will you please state whether or not, in your opinion, the registration and stamping of the books of account kept in Chinese by the Chinese merchants would be sufficient to insure the inspection of those books and also the payment of all their taxes?

MR. FELIX: I object to the question, in the first place, on the ground that the witness should not be asked his opinion except as to those matters in which

he is an expert; in the second place, because it is not the witness who is called upon to determine the sufficiency or insufficiency of this system, but the legislative branch of the government, which has passed the law.

lative branch of the government, which has passed the law.

A In making my answers, I want to say that neither now nor at any other time have I meant to give them with any greater right than that which appertains to every citizen, which is that of expressing his opinion upon any matter of public interest, without regard to the academic titles which he may or may not have. I believe it would be a useful thing for the public safety, so far as bookkeeping is concerned, if the books were properly sealed by some office, such as that of the Internal Revenue, or whichever it might be. Thus we would not run the risk of the substitution of documents in case it should be necessary to make things clear.

Mr. Felix declined to cross-examine the witness.

There being no further questions, the witness was excused, and the hearing was then, at 4:00 o'clock p. m., continued until Wednesday, September 12, 1923, at 2:30 o'clock p. m.

Wednesday, September 12, 1923.

The hearing was resumed at 2:30 o'clock p. m., the commissioner, the attorneys for the respective parties, and the reporters being present:

Jo Cho Lam, a witness called on behalf of the petitioners, was duly sworn and testified as follows through the interpreter:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, and occupation.

A Jo Cho Lam, 67 years old, merchant, 249 Calle Marquina, Binondo, Manila.

Q What kind of a mercantile business do you conduct there?

A Importer of general merchandise.

Q What is your nationality?

A Chinese.

Q From what countries do you import the merchandise handled by you?

A Hongkong, Shanghai, Singapore, and Putawayo.

Q Where is that place you mention, Putawayo?

A It is a colony of Holland.

Q From whom do you purchase your goods in those countries?

A Through agents.

Q Of what nationality are those agents through whom you buy?

A They are all Chinese.

Q Have you any partners in your business living in China?

A Yes, sir.

Q Do you make reports of the business to them in China?

A Yes, in Chinese.

Q In what form is that report made?

A There is only one form in Chinese, a general form.

Q How do you make up this report at Manila before you send it to your partner in China? Do you send him the balance sheet of your books?

A On loose papers, in Chinese.

Q In making your report, do you send a balance sheet to your partners?

A Yes, from the books.
Q How often do you make these reports to your partners?
A Yearly.
Q How many employees do you have in your establishment?
A Including myself, eight.
Q Of what nationality are they?
A Chinese.
Q How long have they been working for you?
A This is a new business; they have been working for me three years.
Q What books of account do you keep in your establishment?
A Chinese.
Q What particular books do you keep in Chinese?
A Five books.
Q Do you read or write any language other than Chinese?
A No, sir, I don't.
Q Does your bookkeeper, or any of your employees, read or write any language other than Chinese?
A No, they only know the figures.
Q If you were compelled to keep your books of account in any language other than Chinese, would you be able to continue operating your business?

MR. FELIX: I object to the question on the ground that it is immaterial.

A No, sir, it would be impossible.
Q Why?
A Because without the books I can't do business.

CROSS-EXAMINATION BY MR. FELIX:

Q How long have you been in the Philippine Islands?
A More than 40 years.

Q. And during all that time, while you have been in the Philippine Islands, you have been in the City of Manila?

A Yes, sir.

Q What kinds of goods do you generally import from foreign countries?

A Starch, rice, lard, vegetable oils, fruits, onions, potatoes, dried fish, etc.

Q What was the total amount of your sales for last year?

A About P500,000.00.

MR. FELIX: I move that all the testimony of this witness be stricken out, for the reason that although the provisions of Act No. 2972 may be prejudicial to him, he is not a party to this action, and therefore his testimony is wholly incompetent, immaterial and irrelevant.

Q What percentage of gross profit did you ordinarily add to the cost of the goods which you sold last year?

A It is not certain, because sometimes I lost, according to the market price.

Q Well, having regard to the market price, what percentage of gross profit, ordinarily, did you add to the cost of the goods which you sold in this market last year?

A I can't tell what percentage. At the end of the year I know the profit or loss for the year.

Q I am not asking you about the profit or loss, but I am asking you as to what percentage you added to the cost of the goods which you sold last year.

MR. GIBBS: I object to the question on the ground that it has already been answered.

A It is not certain; it is according to the market conditions.

Q But approximately, considering the market conditions which existed last year, what percentage of gross profit did you add to the cost of the goods which you sold in this market last year? It is finished business now, and you should know.

MR. GIBBS: I object to the question on the ground that it has already been answered.

A It is according to the market price; you can't figure how much percentage was added. I just imported some potatoes and I am losing money on them right now.

MR. FELIX: I move that the last portion of the answer of the witness be stricken out as not being responsive.

Q You filed an income-tax return this year for your income tax for the period of last year, did you not?

A Yes, sir.

Q For the business which you represent?

A Yes.

Q Do you keep your books of account in Cantonese?

A In Chinese characters; they are all the same, whether Cantonese, Fukieng, or any other.

Q Your are a bookkeeper yourself, are you?

A No, sir.

Q And you don't know bookkeeping either, do you?

A No, sir, I employ a bookkeeper.

REDIRECT EXAMINATION BY MR. GIBBS:

Q What were your net profits for the year 1922?

A I can't state exactly, but it was something more than P10,000.00.

Q Are you able to read or write characters in Chinese?

A Yes, sir.

Q Are the Chinese written characters the same in all parts of China?

A Yes, sir, just one set of characters.

Q Are you able to check up and understand books of account kept in Chinese?

MR. FELIX: I object to the question on the ground that it is leading and on the further ground that it has already been answered.

A Yes, sir.

Mr. Felix declined to recross-examine the witness.

There being no further questions, the witness was excused and left the stand.

Chan Shing Wun, a witness called on behalf of the petioners, was duly sworn and testified as follows through the interpreter:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence and occupation.

A Chan Shing Wun, 51 years of age, merchant, 441 Dasmariñas, Binondo, Manila.

Q What is your nationality?

A Chinese.

Q How long have you been in the Philippine Islands?

A More than 24 years.

Q How long have you been running your present business?

A 10 years.

Q What kind of a mercantile business are you running?

A Importer.

Q From what countries do you import your goods?

A From Hongkong and Shanghai.

Q From whom do you purchase the goods imported by you from Hongkong and Shanghai?

A I have a partner who ships goods to me, in Hongkong.

Q And in Shanghai?

A From Shanghai, through an agent.

Q Of what nationality is that agent?

A Chinese.

Q In what language do you conduct your correspondence with your partner in Hongkong and with your agent in Shanghai?

A In Chinese.

Q Do you read or write any language other than Chinese?

A No, sir.

Q Do you keep books of account in your establishment?

A Yes, sir.

Q In what language are those books kept?

A In Chinese.

Q How many employees do you have?

A Eleven.

Q Of what nationality are they?

A All Chinese.

Q Does your bookkeeper, or any other of your Chinese employees, read or write any other language than Chinese?

MR. FELIX: I object to the question on the ground that it is incompetent, and on the further ground that the witness is not qualified to testify on this point.

A No, sir, only Chinese.

Q Do you make reports to your partner in Hongkong of the business done by you here?

A Yes, sir.

Q How do you make those reports?

A I copy them from the books for the whole year, and make up the report.

Q If Act No. 2972, making it unlawful for any merchant to keep his books in any language other than English, Spanish, or a native dialect, were enforced, would you be able to continue operating your business?

MR. FELIX: I object to the question on the ground that it is immaterial, and on the further ground that, as a matter of fact, the law is in force, even though its operation may have been suspended.

A It would be impossible, because I don't understand them.

Q Do you read and write Chinese characters?

A Yes, sir.

Q How often do you consult and check up your books during the year?

A Mostly every day, but sometimes every two days.

Q Could you run your business without being able to examine and understand your books of account?

MR. FELIX: I object to the question on the ground that it is immaterial.

A No, sir, I would be like a blind man, because I don't understand the other languages.

MR. FELIX: I move that all the testimony of this witness be stricken out, for the reason that although the provisions of Act No. 2972 may be prejudicial to him, he is not a party to this action, and therefore his testimony is wholly incompetent, immaterial and irrelevant.

CROSS-EXAMINATION BY MR. FELIX:

Q Those 24 years that you have been in the Philippine Islands have been spent by you in the City of Manila?

A Yes, except sometimes when I went back to China on a trip.

Q Do you sell goods at retail, as well as wholesale?

A In sacks and cases. not at retail.

Q You have also customers who are Americans, Spaniards, or Filipinos, have you not?

A Very seldom.

Q Do you mean to say that in spite of your long residence in the City of Manila, you don't understand either Spanish or Tagalog

A No, sir, because nearly all our customers are Chinese.

Q You are not a bookkeeper, are you?

A No, sir, I am not, but I employ a bookkeeper.

Q Neither do you understand bookkeeping, do you?

A I understand it. If I didn't understand it, how could I do business?

Q Where did you study bookkeeping?

A In China, in the course of my business experience.

Q In what manner did you learn bookkeeping while you were engaged in business in China?

A By selling goods and collecting and paying out money.

Q How much did the sales which you made in your business last year amount to?

A About P680,000.00, more or less.

Q What percentage of gross profit did you ordinarily add to the cost price of your goods in the sales which you made last year?

A There was no fixed percentage; sometimes I lost money when I sold.

Q Approximately what percentage?

A There was no fixed rate; sometimes I added five or ten per cent., and sometimes I lost five or ten per cent.

Q You filed this year an income-tax return covering the income from your business for last year, did you not?

A Yes, sir.

Q What kind of merchandise do you import?

A Rice, vegetable oils, noodles, potatoes, onions, etc.

RE DIRECT EXAMINATION BY MR. GIBBS:

Q What were your net profits, approximately, for the year 1922 on this business which you did?

A There were no profits last year; there was a loss of more than ₱1,000.00.

RECROSS-EXAMINATION BY MR. FELIX:

Q If your losses last year amounted to more than ₱1,000.00, will you explain to the commissioner why you filed an income tax return for last year with the Internal Revenue Bureau?

A According to the income-tax law, one is obliged to file a return. Even if there is a loss, you must file a return. There being no further questions, the witness was excused and left the stand.

Chiong Sing, a witness called on behalf of the petitioners, was duly sworn and testified as follows through the interpreter:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, occupation, and place of business.

A Chiong Sing, 42 years of age, 228-230 Calle T. Pinpin, merchant.

Q What kind of mercantile business are you engaged in?

A The grocery business.

Q How long have you lived in the Philippine Islands?

A 24 or 25 years.

Q What is your nationality?

A Chinese.

Q Do you keep books of account?

A Yes, sir.

Q What particular books of account do you keep?

A One set of books in Chinese.

Q How many employees have you?

A Nine.

Q What is the nationality of your employees?

A Chinese.

Q Do you or any of your employees read or write any language other than Chinese?

MR. FELIX: I object to the question on the ground that the witness is not qualified to testify on this point.

A No, sir.

Q Do you import your own merchandise?

A Yes, sir, sometimes I import from Hongkong.

Q Do you have a business partner in China?

A No, sir.

Q When you buy merchandise from Hongkong in what manner do you carry on your correspondence?

A In Chinese.

Q Are you able to read and write Chinese?

A Yes, sir.

Q If Act No. 2972 were enforced, would you be able to continue running your business?

MR. FELIX: I object to the question on the ground that it is immaterial.

A No, sir, because I wouldn't understand it.

CROSS-EXAMINATION BY MR. FELIX:

Q Those 24 or 25 years that you have been in the Philippine Islands you have passed in the City of Manila, have you not?

A Yes, sir, except sometimes when I went to China.

MR. FELIX: I move that all the testimony of this witness be stricken out, for the reasons that although the provisions of Act No. 2972 may be prejudicial to him, he is not a party to this action, and therefore his testimony is wholly incompetent, immaterial and irrelevant.

Q What class of merchandise do you import and sell?

A Groceries and general merchandise.

Q What was the total amount of the sales which you made last year?

A ₱180,000.00.

Q Did you file this year an income-tax return corresponding to your business for last year?

A Yes, sir.

Q You are not a bookkeeper, are you?

A No, sir, I am not.

Q And you haven't studied bookkeeping, have you?

A Yes, sir, I have studied it.

Q When and in what way did you study bookkeeping?

A When I was engaged in business in China, and also in Manila.

Q In what way did you learn bookkeeping?

A By looking at the books, buying and selling, and collecting and paying out money.

There being no further questions, the witness was excused and left the stand.

The hearing was then, at 4:20 o'clock p. m., continued until Thursday, September 13, 1923, at 2:30 o'clock p. m.

Thursday, September 13, 1923.

The hearing was resumed at 2:30 o'clock p. m., the commissioner, the attorneys for the interested parties, and the reporter being present.

Dee C. Chuan, a Chinese, a witness called on behalf of the petitioners, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, and occupation.

A Dee C. Chuan, 35 years of age, merchant at 1032 Calle Juan Luna, Manila, living at 167 Calle Roberts, Pasay.

Q How long have you lived in the Philippine Islands?

A 22 years.

Q What kind of mercantile business are you engaged in?

A In lumber.

Q And aside from your lumber business, what positions do you occupy?

A I am the president of the Chinese General Chamber of Commerce and president of the China Banking Corporation, and some others, of course.

Q How long have you been president of the China Banking Corporation?

A Since its organization, about three years ago.

Q And how long have you been president of the Chinese Chamber of Commerce?

A I have been president of that for five years.

Q What languages do you speak, Mr. Dee C. Chuan?

A I speak Chinese and English.

Q Where did you learn the English language?

A I studied it in Hongkong.

Q As president of the Chinese Chamber of Commerce and of the China Banking Corporation, and in the conduct of your own business, how extensively have you come into contact with the Chinese merchants of the Philippine Islands?

MR. FELIX: I object to the question as being immaterial.

A Very extensively. I come into contact with the Chinese almost every hour—I don't mean to say at night, of course, but in the day time.

Q Do you meet the Chinese merchants from the provinces from time to time?

A Yes, sir, I do.

Q Have you made inquiries or investigation to ascertain what Chinese individuals, companies or corporations engaged in business in the Philippine Islands are now keeping books of account in any language other than Chinese?

MR. FELIX: I object to the question as being immaterial.

A I have; I have made investigations, and found out that there are only a few of the Chinese merchants that

are keeping their in a language other than Chinese.

MR. FELIX: I ask that this answer of the witness be stricken out on the ground that it expresses merely his conclusion. The witness should testily only as to facts.

Q What would you say, from your investigation and knowledge of the subject, would be the maximum number of Chinese merchants who are actually keeping their books of account in any language other than Chinese?

MR. FELIX: I object to the question on the ground that it is immaterial and on the ground that it calls for the opinion of the witness.

A From my experience, I find that there are not more than twelve Chinese firms that are keeping their books in any language other than Chinese.

Q When you speak of firms, does that includde individuals engaged in business also?

MR. FELIX: I object to the question on the ground that it is leading.

A That applies to individuals, firms, and financing corporations.

Q Now, how many of the Chinese business concerns or individuals who keep their books in any language other than Chinese keep another set of books in Chinese?

A There are about eight.

Q And how many of the Chinese business establishments keep books of account only in English or Spanish?

MR. FELIX: I object to this entire line of questions on the ground that it is wholly immaterial.

A As far as I know, there are only four.

Q Do any Chinese merchants of business establishments in the Philippine Islands, so far as you know, keep books of account in any native dialect?

MR. FELIX: I object to the question on the ground that the witness has not so far demonstrated his capacity to testify on that point, and on the further ground that it is immaterial.

A So far as I know, no Chinese merchants keep their books in any of the native dialects.

Q Do you know, in a general way, approximately how many Chinese business men in the Philippines can read and write proficiently any language other than Chinese?

MR. FELIX: I object to the question on the ground that the witness is not competent to testify on that point.

A You mean business men only, not including professional men?

Q I refer to business men.

A There are only a few; there are only about a dozen—not more than half a dozen.

Q Ouside of that number of half a dozen, approximately, are there any Chinese merchants in the Philippines who, in your opinion, would be able to check up or understand books of account kept in English, Spanish, or any native dialect?

MR. FELIX: I object to the question on the ground that the witness has not so far shown that he is qualified to testify on this point.

A Outside of about six merchants who can read and write English proficiently, I don't think there are any Chinese merchants who can check their books in English.

Q How about Spanish?

A I don't think there are any Chinese who can check their books in Spanish. I mean to say, a merchant must possess a knowledge of accounting before he can check up his books properly. A mere knowledge of English or Spanish, without any knowledge of accounting, would not enable him to check his books properly.

Q Do you, in your lumber business, check your own books of account?

A Yes, I do sometimes. I have also an American accountant; that is, I employ an American who is also an accountant, and he sometimes checks the books himself.

Q Do you keep in close touch with the accounting of your business?

A I must, because accounting is the most important part of the working of a business, and without checking it up I would be at a loss to know what is going on.

Q Are you sufficiently familiar with accounting to be able to check up your books intelligently?

A I don't consider myself as an accountant, but I have had so many years of experience in business, and I have studied bookkeeping to a very great extent, that I think I have a fair knowledge of accounting, so as to check up the books in an efficient manner.

Q Do you also keep a set of books in Chinese?

A Yes, sir, I do.

Q Why do you find it necessary to keep a set of books in Chinese?

MR. FELIX: I object to the question on the ground that it is based upon an assumption which so far does

not appear in the evidence, which is the necessity of the witness keeping his books in Chinese.

A I found it was necessary for me to keep two sets of books, that is to say, besides the English set of books, also a set of Chinese books. In the first place, I have four partners in my firm, who are my father, my brother, and my uncle. They don't know how to read or write English or Spanish, and they insist that they don't know what is going on if they don't have a set of Chinese books. In the second place, the majority of our employees are Chinese, and as a matter of fact, the English accounting is copied from the Chinese accounting—it is really a copy of the Chinese accounting. We use the Chinese accounting as the basis. Our employees don't know how to speak or read English or Spanish, and in order for them to communicate with the bookkeepers, and in order for them to communicate with the bookkeepers, it is necessary to have a set of Chinese books. Another thing, we have Chinese bookkeepers who have been working for us for quite a number of years. In these bookkeepers we have full confidence that the books are kept properly.

Q Since the enactment of Act No. 2972, have you made inquiries and a general investigation as to the possibility of the Chinese merchants complying with that law?

MR FELIX: I object to the question on the ground that it is immaterial, and on the further ground that the witness is not qualified to testify on this point.

A I have made inquiries and have had frequent consultations with the Chinese merchants in the Philippine

Islands, and I found that they are not able to comply with the law, that it will be impossible for them to comply with the law.

Q Why will they be unable to comply with the law, Mr. Dee C. Chuan?

A For the simple reason that they don't understand any other language except Chinese, and that the majority of the Chinese are doing so small an amount of business that it wouldn't warrant them in employing a bookkeeper.

Q Assuming that they are now employing Chinese bookkeepers, what would be the difference in expense entailed by employing Filipino or American or English or Spanish bookkeepers?

MR. FELIX: I object to the question on the ground that it is immaterial.

A The difference is very great. To employ a foreign bookkeeper, that is, a bookkeeper who can keep the books properly, the salary will run from two hundred pesos up per month, and a Chinese bookkeeper, taking, for example, the one I have in my store. I am only paying him fifty pesos a month. Of course, in addition to that I provide him with food and lodging; but the difference would be very, very great.

Q And what other expense, if any, would be entailed by hiring foreign bookkeepers?

MR. FELIX: I object to the question on the ground that it is immaterial.

A For a Chinese firm to employ a foreign bookkeeper, in order to enable the Chinese manager and the employees to communicate and speak and give orders to the bookkeeper, it would be necessary to employ a

translator—a translator who knows how to speak Chinese and English thoroughly—, so that he can interpret for both parties. Then, besides, it would be an impossible thing, because the accountant or bookkeeper is the right-hand man of any manager or proprietor in any store—he has to employ a man in whom he has sufficient confidence. Otherwise, it would be very hard for him to deal with him properly.

Q And from your knowledge of the Chinese people and of their business habits and customs, what would you say as to whether a Chinese would be willing to confide his business to a foreign bookkeeper if he were unable to check the books up?

MR. FELIX: I object to the question on the ground that it is immaterial.

A It is natural that if he were not able to check him up, he wouldn't have enough confidence in him.

Q Referring to the customs and the expense of maintaining Chinese employees, will you state to the commissioner generally how the Chinese merchants maintain their employees, whether they live together or not, and about what the average expense per man is let us say, for food and laundry, without counting the lodging furnished by the proprietor?

MR. FELIX: I object to the question on the ground that it is immaterial as to some parts of the question, and on the further ground that the witness is not qualified to testify on this point.

A In my experience, it has been the custom of the Chinese merchants in taking persons into their employ that these employees start first from the bottom of the work, that is, they start in generally as a sort of

messenger boy, or sometimes they start as cook, and then work in the store and work up, and then, if the proprietor finds them to be honest and efficient, they are promoted to salesman, and then bookkeeper, and after that he becomes the No. 2 man in the store, and then, when there is a chance for the manager to go away from his position, the second man takes his place. That has been the custom. As far as their living is concerned, the firms or stores furnish food and laundry to the employees free of charge, and this food and laundry will cost from ten to twenty pesos a month per person, depending on the kind of store. If it is a large store, it will probably cost fifteen to eighteen pesos; if it is a small store, such as a tienda, I think it will cost about ten to fifteen pesos, averaging probably about twelve pesos.

MR. FELIX: I move that the answer of the witness be stricken out on the ground that it appears from the answer itself that it is hearsay.

Q Now, with reference to interpreters, assuming that this law were enforced and that it became necessary for thousands of the Chinese merchants to employ interpreters as well as foreign bookkeepers, are there any sufficient number of such interpreters to fill all these positions in the Philippine Islands?

MR. FELIX: I object to the question on the ground that the witness is not qualified to testify on this point; he has not demonstrated his competency to testify on that matter.

A There is not a sufficient number of translators that could be employed here. It would be impossible to get such a number. If it is only a question of a few, such

number of inspectors as might be required by the Bureau of Internal Revenue to check up accounts, of which I suppose there wouldn't be so many, it would be possible to secure them.

Q And assuming that the law were enforced and the Chinese merchants were able and ready to employ foreign bookkeepers, are there any considerable number of unemployed bookkeepers competent to take charge of the books of account of the Chinese merchants in the Philippine Islands?

MR. FELIX: I object to the question on the ground that the witness has not demonstrated his capacity to testify on that point.

A There is not a sufficient number of bookkeepers to be employed to do the work of the Chinese merchants here.

Q What opportunities have you had to inform yourself as to the number of bookkeepers in the Philippine Islands?

A We have always had a shortage of bookkeeeprs here in the Philippine Islands, in my experience. In the China Banking Corporation, when we first opened, we tried very hard through many avenues to get competent bookkeepers and accountants. We found it was impossible to get them because they were not available. We had to get accountants and bookkeepers from the other banks and pay them higher salaries and take them out of the other banks. That is one instance. In my establishment, we had also to hire or employ often one bookkeeper at first, and it took us two or three months before we could get one. Our manager, Mr. Harris, is an accountant himself, and

he had to start to work himself, and then after that we got bookkeeper, and since that time we have been able to train him to keep the books. Even if there were a number of bookkeepers available here, they have had no experience. You take bookkeepers who have just left the schools, and they are not able to take charge of a set of books and keep them in an efficient manner without acquiring experience first.

Q Are you familiar with the statement which appears on page 7 of the printed record in the case of Young versus Rafferty, R. G. No. 10951, showing the number of wholesale and retail merchants and manufactures of different nationalities engaged in business in the Philippine Islands in the year 1912, the total amount of sales made by the merchants of each nationality, and the amount of capital employed by manufacturers in their business during that year?

A Yes, sir, I have had occasion to look over that statement; I am quite familiar with it.

Q Taking that statement as a basis, and assuming that the proportion of the Chinese merchants and of the business done by them has not decreased since the year 1912, state whether you have made an estimate of how many Chinese merchants make an annual net income of not to exceed five hundred pesos and how many not to exceed one thousand pesos?

MR. FELIX: I object to the question on the ground that it refers to a hypothetical case.

MR. GIBBS: I wish to state of record that we are offering these calculations in lieu of the best evidence and exact information, which the respondent Collector

of Internal Revenue has in his possession and refuses to furnish us.

MR. FELIX: The decision of the Supreme Court upon this matter settles it, and we therefore abide by the decision of the Supreme Court.

A Yes, I have.

Q Will you please produce that estimate?

(The witness produced a document, which was marked for identification "Exhibit G.")

Q Upon what do you base this calculation contained in Exhibit G, Mr. Dee C. Chuan?

A I made up this estimate and calculation by inviting the best-known and most practical Chinese merchants and having a consultation with them, and by making inquiries from many merchants, basing this calculation on the statement prepared, I suppose, by the Bureau of Internal Revenue in the case of Young versus Rafferty. This was in 1913. The total number of wholesale Chinese merchants was 3,335, and the total number of retail Chinese merchants was 8,445, making a total of 11,780 Chinese merchants in the Philippine Islands, making sales of the total amount of—

Q I don't think it is necessary to read that; you can just simply say that that is the calculation you have made, without going over the details. We are going to put that in evidence as your calculation according to the testimony. Now, in making up that calculation, who assisted you?

A We had the Chinese Consul, Mr. Albino Sy Cip, Mr. Carlos Palanca, Mr. Siy Cong Bieng, Mr. Dy Buncio, and many others.

Q And in preparing that calculation, did you apply your own experience and knowledge as well as that of the other people who took part in and assisted you in making the statement?

MR. FELIX: I object to the question on the ground that it is leading, and furthermore on the ground that the witness cannot testify for other persons.

A Yes, we had several conferences, and we came to the conclusion that this statement which was prepared should be made as the result of our experience and knowledge of the Chinese business men here.

MR. FELIX: I move that the answer of the witness be stricken out on the ground that it is hearsay.

Q Now, referring to the first item there, a calculation of 50 merchants who do an average business of a million pesos a year each, can you, if called upon, give the names of substantially fifty merchants doing business on a scale as large as that?

MR. FELIX: I object to the question on the ground that it is immaterial.

A Yes.

Q Mr. Dee C. Chuan, referring to the Chinese merchants who are not able to read or write any language other than Chinese, how would the difficulties of keeping books by the Chinese in some foreign language in the Philippines compare with the difficulties of an American keeping books in Chinese in China?

MR. FELIX: I object to the question on the ground that it is immaterial.

A I think the difficulties would be the same.

Q In cross-examination by the fiscal of a number of Chinese merchants who have been presented as wit-

nesses, they have been asked whether they have made any effort to comply with Act No. 2972. Will you state to the commissioner whether there is any way that they can make any preparation to comply with Act No. 2972?

A In my opinion, there is no way to make that preparation. Of course, my statement will be quite long; but I will state that when the Legislature passed this law, the Chinese Chamber of Commerce invited Chinese representatives from different sections in the Philippine Islands to meet and assemble in Manila, and every one of them responded. They all came here—several thousands of them came down to Manila—, and we explained to them—

MR. FELIX: I wish to make it appear now that I object to the question and to the answer of the witness on the ground that it is merely hearsay.

A (The witness continuing his answer)—that the Philippine Legislature had passed such a law and meant to compel all merchants to comply with it; that is to say, they would be required to keep all of their books in English, Spanish, or one of the local dialects, and at the time we tried very hard and made every effort to find some way so that we would be able to comply with it, but after discussion, every one of them came to the conclusion that there was no way to comply with the law—that we didn't know how. It would be too long—it would take possibly many, many years—for them to study the language, and I think many of them are too old, those of them who have started to work from the bottom up and are trained in the Chinese way of doing business; for

them to comply with the law, without any previous study or knowledge, it would be most difficult, and practically impossible.

MR. FELIX: In the first place, I move that the entire testimony of this witness be stricken out on the ground that it is wholly incompetent, irrelevant and immaterial, and on the ground that even if it were that the provisions of Act No. 2972 are prejudicial to the Chinese merchants, they are not parties to this action. In the second place, and more particularly, because of the fact that the testimony of this witness is obviously and wholly inadmissible and its admission would be a palpable breach of the rules of evidence.

CROSS-EXAMINATION BY MR. FELIX:

Q You have never examined a person in bookkeeping in order to ascertain the extent of his knowledge of bookkeeping, have you?

A Yes, I must ascertain his knowledge first.

Q You don't understand my question.

MR. GIBBS: Yes, he understood it very well and answered it very well.

Q You don't understand my question; my question is as follows: You have testified heretofore that you are not a bookkeeper, although you have some knowledge of bookkeeping. Now, then, that being the case, you have not examined any person to determine the extent of his knowledge or capacity in bookkeeping, have you?

A I studied bookkeeping, but of course I didn't study it very long, and the knowledge of bookkeeping and

accounting which I have acquired was all through experience, and I found that experience is more important than study. When I first studied bookkeeping. I didn't know any of it at all—I didn't know the practical side of it until I acquired it through experience.

Q My question is whether you have examined other persons to know whether they know bookeeping or not.

A Yes, I always examine to find out how much knowledge of bookkeeping a man has and how much experience he has had before I will employ him. I always examine him.

Q Therefore, all the investigations which you have made in order to ascertain whether or not there are sufficient competent bookkeepers in the Philippine Islands to keep the books of account of Chinese commercial houses come down simply to the examinations which you have made of your own employees; is that true?

A Yes, that is true, and also by information received from other merchants who have needed bookkeepers. Other practical business men always say it would be impossible, that it is very hard to obtain a competent bookkeeper. That is, if you ask any merchant, he will testify to that, I am sure.

Q All the investigations to which you have referred in the course of your direct examination were limited to conversation which you have had with prominent Chinese merchants in the Philippine Islands; isn't that true?

A I don't understand to what you refer. You mean the examination of bookkeepers?

Q I am referring to Exhibit G, and to the number of bookkeepers available in the Philippine Islands.

MR. GIBBS: I object to the question on the ground that it is wholly unintelligible.

A Not only by investigation, but through my experience—my personal investigations in making inquiries from the merchants, and my personal experience. I found that there are not a sufficient number of competent bookkeepers available.

Q In what form, or in what way, did you apply that experience of which you speak in determining the number of bookkeepers in the Philippine Islands so as to be able to testify that it is insufficient?

A Through experience. Take, for instance, the China Banking Corporation: while there were a number of applications that came in, possibly about fifty or sixty, out of those sixty we didn't get even two—I think it was two or three—that we found to be competent to keep a simple book only in the bank. I asked them whether they had been employed in any other establishment, and some said, "Never; just at school;" others said, "Only a few months;" and that was my experience.

Q That was your own experience?

A Not only that, but I have been discussing this matter of bookkeepers and have been making inquiries also from foreigners here and from Filipinos, Americans, and Spaniards, and from our own people, and they all have the same opinion, that it would be impossible to secure the necessary number of efficient bookkeepers or accountants.

MR. FELIX: I move that the last portion of the

answer of the witness be stricken out on the ground that it is not responsive, in that it refers to his discussions with others and not to his own experience.

REDIRECT EXAMINATION BY MR. GIBBS:

Q What part do the Chinese merchants play in the distribution of imports and the gathering of exports of the Philippine Islands?

MR. FELIX: I object to the question on the ground that it is immaterial and on the further ground that the witness has not shown himself to be qualified to testify on this point.

A The Chinese merchants gather, from the most remote places in the Philippine Islands, Philippine products in exchange for imported articles, of which possibly sixty to seventy per cent. come from America. They gather sugar, rice, coconuts, and such other products as are produced in the Philippine Islands, and at the same time they distribute—they are the main distributors of imported articles all over the Philippines.

Mr. Felix declined to recross-examine the witness.

There being no further questions, the witness was excused, and withdrew.

Chow Kwo-Hsien, a witness called on behalf of the petitioners was sworn and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, and occupation.

A Chow Kwo-Hsien, 40 years of age, Chinese Consul-General for the Philippine Islands, living at 60 M. H. del Pilar, Manila.

Q How long have you served as Chinese Consul-General for the Philippine Islands?

A A little bit over two and one-half years.

Q What has been your education in China and in the United States?

A I was educated in China, and educated in the British Colonies, in England, and finally in America.

Q What education did you take in America?

A I took up international law and philosophy in the University of Chicago.

Q How long did you attend the University of Chicago?

A Three years.

Q What has been the extent of your general acquaintance with the Chinese who are engaged in business in the Philippine Islands?

A Well, I have very close contact with most of the merchants, not only in Manila, but in the provinces also.

Q Are you acquainted with the provisions of Act No. 2972?

A Yes.

Q Have you made inquiries and investigations to ascertain how many Chinese individuals, companies or corporations engaged in business in the Philippine Islands are now keeping books of account in any language other than Chinese?

A Well, I have made inquiries and investigation, and the result of my investigation shows that the number of Chinese merchants, corporations or firms that keep their books of account in any language other than Chinese does not exceed one dozen.

MR. FELIX: I move that the last portion of the answer of this witness be stricken out on the ground

that the witness should state what he did in his investigations, but not give his conclusions, as that is a matter for the court to decide.

Q Now, how many of these Chinese business concerns or individuals are there who keep their books in some language other than Chinese who also keep another set of books in Chinese?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to testify on that point.

A Such number does not exceed nine or ten, in the Philippine Islands.

Q How many of the Chinese business establishments, so far as you have been able to ascertain, keep their books of account only in English or Spanish?

MR. FELIX: I object to the question on the same ground, that the witness has not shown himself qualified to testify on that point.

A About five.

Q Do any of the Chinese merchants or business establishments, so far as you know, keep books of account in any native dialect?

A No.

Q Do you know, in a general way, approximately how many Chinese business men in the Philippine Islands can read or write proficiently any language other than Chinese?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to testify on that point.

A The number of men of such qualifications does not exceed eight.

Q Now, aside from those persons, who you say would not exceed eight in number, are there, in your opinion, any Chinese merchants in the Philippine Islands who would be able to check up or understand books of account kept in English, Spanish, or any native dialect?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to testify on that point. He should testify to facts, and not give his opinions. That is a matter for the court to decide.

A About four.

Q You haven't understood my question. Except the eight who can read and write proficiently, are there, in your opinion, any other Chinese merchants in the Philippine Islands who would be able to check up or understand books of account kept in English, Spanish, or any native dialect?

A Apart from them?

Q Yes, apart from them.

A No, I don't think so.

Q Since the enactment of Act No. 2972, have you made inquiries and general investigation as to the possibility of the Chinese merchants complying with that act?

A Yes, I have.

Q What has been the result of those inquiries and investigations?

MR. FELIX: I object to the question, on the ground that the witness should testify as to what he has done, and not give his conclusions as to what he has found.

A I found that the great majority of Chinese merchants are utterly unable to comply with that act.

Q Will you give the Commissioner some of the reasons why they can't comply with it?

A First, the grat majority of them don't know any foreign language—they only know their own native language. Second, they can't afford to engage foreign bookkeepers, as required by that act, nor can they afford to engage outsiders in whom they have no confidence to take charge of their books of account. Third, no merchant can successfully manage his business establishment without understanding his books of account. In case the act were enforced, it would require an interpreter to interpret between the owner or proprietor and the bookkeeper, and that would involve extra expenditure, not only the salary of a foreign bookkeeper, but also the salary of the interpreter. Another reason is that in case of discrepancy or mistakes committed by the bookkeeper, the question arises as to who is responsible, whether the manager or the bookkeeper.

Q Have you made inquiries and investigations to ascertain whether there would be any considerable number of competent bookkeepers available for employment if this act were enforced?

A I have made very careful inquiries from very reliable sources, Chinese, Americans, Spaniards and Filipinos, and the result I find is that in view of the large number of Chinese merchants in the Philippine Islands, the number of bookkeepers would be utterly inadequate to the demand of these merchants. The supply is less than the demand.

Q Are you familiar with the statement which appears on page 7 of the printed record in the case of Young ver-

sss Rafferty, showing the number of wholesale and retail merchants and manufacturers of different nationalities engaged in business in the Philippine Islands in the year 1912, the total amount of sales made by the merchants of each nationality, and the amount of capital employed by manufacturer in their businesses, during that year?

A Yes, I am quite familiar with this statement.

Q Now, taking that statement as a basis, and assuming that the proportion of Chinese merchants and of the business done by them has not decreased since the year 1912, state whether you have made an estimate, with the assistance of Mr. Dee C. Chuan and others, of the number of Chinese merchants who make an annual net income of not to exceed ₱500.00, and how many of not to exceed ₱1,000.00.

MR. FELIX: I object to the question on the ground that it refers to a purely hypothetical matter, and on the further ground that the witness has not shown himself qualified to answer it.

A 8,445 Chinese retail merchants—

Q Does this Exhibit G contain the calculations made by you and Mr. Dee C. Chuan and other merchants upon the subject?

A Yes, it does.

Q Is that calculation or estimate as nearly correct as it was possible for you to make it?

MR. FELIX: I object to the question on the ground that it is leading.

A Yes, that calculation is as correct as it can be made without exact information as to the amount of sales made by each merchant, which could only be obtained by

reference to the records of the Bureau of Internal Revenue or the statements of each Chinese merchant.

MR. GIBBS: I offer in evidence Exhibit G as a part of and in connection with the testimony of Mr. Dee C. Chuan and of the Consul-General, the present witness.

MR. FELIX: I object to the utmost of my power to the admission of this Exhibit G, for the following reasons: First, because it is not the best evidence; second, because the witnesses who have testified as to this Exhibit G have not established their competency in such manner as to guarantee the correctness of this document; third, on the ground that this document is wholly immaterial, it having been admitted in the testimony of the witness that only sixty per cent. of the business of the Philippine Islands is in the hands of the Chinese merchants.

MR. GIBBS: In answer to the objection of the fiscal, I wish to state that this secondary evidence is offered by reason of the refusal of the respondent Collector of Internal Revenue to furnish the best evidence, which is in his possession, notwithstanding the fact that the petitioners, obtained the written authorization and consent of all of the Chinese merchants of the City of Mania, directed to the Collector of Internal Revenue, to furnish to the court a statement of the total sales and of the income tax of each of said Chinese merchants of the City of Manila, and offered to pay the expense of the additional employees which it was stated by the Collector of Internal Revenue would be required for the purpose of compiling and presenting this information; and for the further reason that

to obtain the testimony or deposition of each of the Chinese merchants of the Philippine Islands as to the total annual sales made by him and as to his net income would require perhaps several years' time, and counsel for the petitioners have been requested by the Supreme Court to terminate their proofs at the earliest possible date, which date was heretofore indicated as on or about the first of September of this year, which has already passed.

MR. FELIX: In reply to the statement of one of the counsel for petitioners, our statement and objection is based upon what was said by them when this same question was submitted to the Supreme Court, and we adhere to what has been decided by that High Tribunal. I ask that the entire testimony of this witness be stricken out, first, on the ground that it is wholly immaterial and irrelevant to the case at issue, and that even if it were true that the provisions of Act No. 2972 are prejudicial to the Chinese merchants of the Philippine Islands, they are not parties to this action; in the second place, and more particularly, because of the fact that the testimony of this witness is obviously and entirely inadmissible under the rules of procedure and its admission would constitute a palpable violation of the rules of evidence.

CROSS-EXAMINATION BY MR. FELIX:

Q You are not a bookkeeper, are you, Mr. Chow?
A No.
Q You don't know bookkeeping, do you?
A No, sir.

Q You therefore are not able to examine a person as to the extent of the knowledge of bookkeeping which he may have, can you?

A Not proficiently.

Q And therefore, everything which you have testified as to the available number of bookkeepers in the Philippine Islands you are stating from hearsay; isn't that true?

A No, I don't think so.

Q Why not? Do you mean that you have examined those who hold themselves forth as bookkeepers in order to determine their capacity or their knowledge of bookkeeping?

A No, I didn't say that I have examined those who are going to be bookkeepers; no, I never said that.

Q Therefore, what you have stated heretofore, that the number of bookkeepers available is very small, you have stated because other people have told you so; isn't that true?

A No, that is derived from my personal knowledge of the extent of Chinese business here and through my close contact with the Chinese merchants, who complained to me from time to time that they couldn't find the necessary number of bookkeepers who would be qualified to keep their books of account—

MR. FELIX: In view of the statement of this witness, I ask that his former testimony as to the number of bookkeepers in the Philippine Islands be stricken out, for the reason that it appears from his answer that what he then stated he knows through hearsay only.

A (The witness continuing his answer)—and because I

also learned through my travels in the southern provinces, in Zamboanga, Cotabato and Sulu, and by careful inquiries made of the Chinese merchants, that the number of bookkeepers available would be inadequate as compared with the number required by the provisions of Act No. 2972.

Q And you and Mr. Dee C. Chuan, and Mr. Sy Cip, and the other persons who prepared this Exhibit G, prepared it only on the basis of information obtained from other Chinese; isn't that true?

A Well, through various formal conferences with Chinese merchants and frequent consultation with them, and also from my own personal knowledge.

Q To what personal knowledge do you refer of which you availed yourself in preparing Exhibit G?

A Well, it consists of my personal consultations with the merchants and of my knowledge of the extent of their business and of the wealth of those merchants.

Q How many of those 3,335 Chinese merchants who are mentioned in this Exhibit G did you consult?

A Well, I have consulted a good number of the list of fifty named.

Q It was probably some ten or twenty?

A I think it was over half.

Q That half to which you are referring means half of those fifty on that list in your hand?

A Yes.

REDIRECT EXAMINATION BY MR. GIBBS:

Q Have you a list there of the Chinese business establishments which do a business of an average of a million pesos a year each?

A Yes, I have a list.

(The witness produced the list referred to, which was marked for identification "Exhibit H.")

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

MR. GIBBS: I offer in evidence this Exhibit H, in connection with the testimony of this witness.

MR. FELIX: I object to the admission of this Exhibit H on the ground that it is wholly immaterial and irrelevant to the question at issue.

MR. GIBBS: I wish to make it appear that I offer that list for the reason that the fiscal in his cross-examination referred to it, and I therefore offer it in connection with the testimony of the witness.

MR. FELIX: No further questions.

There being no further questions, the witness was excused, and withdrew.

The hearing was then, at 4:30 o'clock p. m., continued until Wednesday, September 27, 1923, at 2:00 o'clock p. m.

Wednesday, September 27, 1923.

The hearing was resumed at 2:00 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

H. W. Foster, a witness called on behalf of the petitioners, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, and occupation.

A H. W. Foster, 40 years of age, residing in Manila, dealer in tobacco products at No. 27 Escolta.

Q How long have you resided in the Philippine Islands?

A Since 1905—over 18 years.

Q Have you ever been employed in the Bureau of Internal Revenue of the Philippine Islands?

A Yes, sir.

Q During what years?

A From July of 1911 until—I think it was—March of 1918; something like six and a half years.

Q In what capacity were you employed?

A As Internal Revenue agent, as assistant chief agent, and chief agent.

Q In your capacity as an employee of the Internal Revenue Bureau, did you have to do with the collection of the sales tax and income tax from the merchants of the Philippine Islands?

A Yes, sir, I had to do with the collection, in that as agent my duty was to see that the Internal Revenue Law was properly enforced, and as such I had to inspect the books of account and investigate the businesses of the merchants of the Philippine Islands, to see that they had paid the sales tax.

Q During the time that you were employed by the Bureau of Internal Revenue, how many Chinese accountants did you have employed in the inspection department?

A I remember of two.

Q Did the Bureau of Internal Revenue have any difficulty in employing Chinese accountants while you were there?

A Well, whenever we had the money to spend, we were able to get as many as we needed.

Q Did the Bureau have any difficulty in the inspection of the books of the Chinese merchants while you were employed in the Bureau?

A Because we needed more Chinese accountants and we

had no money to pay for them, it meant a great deal of work for the two accountants that we had. If we had had more money, we would have had more difficulty.

Q Did you find any more evidence of under-declarations on the part of the Chinese merchants than on the part of other merchants while you were in the Bureau?

A That's hard for me to state; I really couldn't state as to that. I don't remember of there having been any difficulty—no greater proportion among the Chinese than among others.

Q How extensively did you come into contact with the Chinese merchants while you were employed in the Bureau of Internal Revenue?

A I was in constant contact with all the business men, distillers, and owners and managers of tobacco factories, and general merchants.

Q Subsequently to your leaving the employ of the Bureau of Internal Revenue, have you come into contact with Chinese merchants in your business?

A Yes, sir.

Q From your knowledge of the Chinese merchants, what would you say as to their ability to comply with Act No. 2972, making it unlawful for any business man to keep his books of account in any language other than English, Spanish, or some local dialect?

MR. FELIX: I object to the question on the ground that the opinion of the witness on this point is entirely immaterial, and also on the further ground that he has not shown himself to be qualified to give an accurate answer to the question.

A A large proportion of the Chinese merchants would not be able to comply with that act, in that they themselves have an imperfect knowledge of Spanish, English, and the local dialects. I had myself, in dealing with these Chinese, to use a combination of English, Spanish and Tagalog, and sometimes a few words of Chinese that I have picked up, in order to make it more convenient for me to get along with them. My knowledge of Chinese just consisted of a very few words: "What do you need?", etc.; but the knowledge of English, Spanish and Tagalog of many of them is very imperfect, and I don't think they would be able to comply with the Act except by hiring other men to keep their books, and then they wouldn't know what is in their books.

Q And, from your experience in the Philippine Islands as an employee of the Bureau of Internal Revenue and since as a merchant, what would you say as to whether or not any considerable number of unemployed competent bookkeepers could be found to fill the vacancies which might be created by the enforcement of this law?

MR. FELIX: I object to the question on the ground that this witness has not as yet shown himself qualified to answer it, and on the further ground that the question is immaterial.

A Good bookkeepers are very scarce, and I believe that it would be hard to get a large number of bookkeepers on short notice. I know that myself, when I am looking for a bookkeeper—I have had to look for bookkeepers on various occasions, and I have a good bookkeeper now, and I would take it as an unfriendly

act if I lost him, because I would find it very hard to replace him.

MR. GIBBS: No further questions.

MR. FELIX: I move to strike out the entire testimony of this witness on the ground that it is wholly immaterial to the case at issue.

CROSS-EXAMINATION BY MR. FELIX:

Q Do you speak Spanish?

A Yes.

Q You also speak Tagalog?

A In a sort of a way; I can get along in Tagalog.

Q And your knowledge of Spanish and Tagalog was acquired during your stay in the islands?

A Yes, I made it my business to learn Spanish and Tagalog.

Q As a matter of fact, when you say that in your dealings as an employee of the Bureau of Internal Revenue you went to the stores of the merchants, you don't mean to say that you talked to each and every person in those stores, do you?

A No, I didn't talk to each and every one of them.

Q Just to the head of the store?

A Well, I talked to various ones; I talked to the head of the store sometimes. The regular procedure of an Internal Revenue agent upon going into a Chinese store, or any other store, is to say, "Let me look at your books." You look over his entire stock of merchandise, to see whether he has articles subject to a specific tax on sale, you examine his licenses, to see that he has the licenses which correspond to the merchandise which he has on sale, and I might have to talk to anyone from the head of the store to the lowest

muchacho, depending upon what I found when I went in there.

Q My question was not whether you might have talked, but whether you did talk to them.

A Well, I couldn't say whether I always talked to all of them; I talked to some of them.

Q Mr. Foster, you didn't go into each and every establishment in Manila during the period of your employment as agent, assistant chief agent, and chief agent of the Bureau of Internal Revenue, did you?

A No, I didn't go into all of them.

Q Nor as a merchant did you go into all the establishments?

A No, not all of them.

Q Only some of them?

A Yes, I can say only some of them.

There being no further questions, the witness was excused, and withdrew.

Brother V. Andrew, a witness called on behalf of the petitioners, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, and occupation.

A My name is Brother V. Andrew, 55 years of age; residence, De la Salle College, Taft Avenue, Manila.

Q Your occupation?

A Teacher of the commercial department.

Q As teacher of the commercial department, do you teach bookkeeping?

A I do.

Q How long have you lived in the Philippine Islands?

A Four years.

Q About how many graduates are turned out each year

by the bookkeeping department of the De la Salle Business College?

A An average of ten.

Q Do you know approximately how many other schools and colleges are teaching bookkeeping in the Philippine Islands?

A I can't vouch for the Philippine Islands, but I know that here in Manila there are three that I consider the best, namely, the High School of Commerce of the Bureau of Education, which has a day and a night course; also the Cosmopolitan Business College, and the Gregg Business College.

Q About how many graduates of the bookkeeping department do the schools other than the De la Salle turn out each year?

MR. FELIX: I object to the question on the ground that the witness is not competent and is not qualified to testify on this point, and that it is not the best evidence.

A I have some data here that I will probably be able to answer that question with, if you will permit me. In talking some time ago with the teacher of the Cosmopolitan Business College, he told me that they graduate an average of about 15 a year, and I was also interested in bookkeeping, and I asked the principal of the Gregg Business College, and she stated that last year they had five graduates. Now, the Philippine School of Commerce—I have this over the signature of the principal—, in 1921-1922 they had 37 graduates, 35 male and 2 female. In the night school of the same year, they had 59 graduates, 56 male and 3 female; in the day school of 1922-1923—that is, I

suppose, last Mar —, they had 40 graduates, 37 male and 3 female, and in the night school of 1922-1923, they had 56 graduates, 55 male and 1 female. Of course, I have also the figures as to the stenographers, but I suppose you don't need those; that is, I was interested in comparing the number of stenographers, etc., that had graduated.

MR. FELIX: I move that the last answer of the witness be stricken out on the ground that it is hearsay.

Q How long have you been engaged in teaching bookkeeping, Brother Andrew?

A You mean entirely?

Q Yes.

A Off and on, about for the last 25 years.

Q While you have been teaching bookkeeping, have you kept in touch with the qualification of the graduates of your establishment and of other establishments devoted to the teaching of bookkeeping, to take charge of books of account after graduation?

MR. FELIX: I object to the part of the question which has reference to other schools in the conduct of which the witness has not actually taken part.

A I have.

Q What can you say as to the ability of a graduate of a bookkeeping department of a college to take charge of books of account after graduation?

A I would consider that they are entirely unfit: In fact, I tell the employers that I wouldn't recommend them to take charge of the books, but to work under a competent bookkeeper.

Q Now, how many years of bookkeeping in subordinate

positions are required, in your opinion, to qualify a graduate of a bookkeeping school to take charge of the books of account of a merchant?

A I would say two years. It depends, of course, on the size of the establishment. In a very small place, he could do so much sooner.

Q State whether, as far as you have been able to ascertain, there are any considerable number of unemployed competent bookkeepers in the Philippine Islands capable of taking charge of the books of account of Chinese merchants.

MR. FELIX: I object to the question on the ground that the witness has not shown himself to be qualified to answer it.

A I think not, for the reason that if they were capable of keeping books at all, they would be employed.

CROSS-EXAMINATION BY MR. FELIX:

Q Brother, do you know Spanish?

A No, I am sorry to say that that part of my education has been neglected.

Q But you can make yourself understood in Sapnish, can you?

A No, I came here to teach English, especialy the commercial lines, and I don't know any Spanish whatever.

Q Brother Andrew, isn't it true that the small Chinese tiendas which are established on the corners of the streets don't need the services of a graduate bookkeeper—that the keeping of their books of account don't require any great knowledge of bookeeping?

MR. GIBBS: I object to the question on the ground that it is not proper cross-examination.

A I think they do.

Q Why do you believe that?

A For the simple reason that I wouldn't recommend a person to keep their books if he didn't know how.

Q Do you believe that the books required in these small business require the services of a graduate bookkeeper?

MR. GIBBS: I object to the question on the ground that it is not proper cross-examination.

A I do.

Q Why?

A For the reason that an incompetent bookkeeper couldn't make a proper statement, say, to the income tax collector.

Q Do you mean to say, Brother, considering the book which would be required in an establishment of that class, being a mere statement of the sales, that that work would require the services of a graduate bookkeeper?

A I still do, for the reason that he is supposed to make a statement, to give a balance sheet and a profit and loss statement, of the business for the fiscal period, and unless he is a graduate bookkeeper he will know very little about such work.

Q Isn't it true, Brother, that to do that work it is sufficient to know the four basic elements of arithmetic, which are to add, subtract, multiply, and divide?

A Absolutely no; if he doesn't know the principles of bookkeeping, he can't keep books.

REDIRECT EXAMINATION BY MR. GIBBS:

Q Brother Andrew, I omitted to ask you on direct examination how many of the graduates of De la Salle College have found employment; that is, graduates of the bookkeeping department.

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A All are employed; in fact, they were employed before the school closed. Mr. Nolting has already asked me to be sure to keep at least three for him for next year. He has eight of my graduates in the bank now, and he has asked me to keep three more for next year.

Q Please state whether the graduates of your bookkeeping department are employed in subordinate positions, or have they taken charge of the books of account of their employers?

MR. FELIX: I object to the question on the ground that it is immaterial.

A They are all in subordinate positions with the exception of one, who has charge of the books, and does the stenography work as well, of one concern.

Q What can you say, Brother Andrew, as to whether the demand for bookkeepers in the Philippine Islands up to the present time has been as great as or greater than the supply?

MR. FELIX: I object to the question on the ground that it is immaterial, and for the further reason that the witness has not shown himself to be qualified to answer it.

A Judging from the fact that all of my graduates are at work, even before graduation, and that I have been

asked for more, and also from the fact that over seventy-five per cent. of the graduates, say, of the Philippine School of Commerce, are employed, I conclude that the demand for competent bookkeepers is greater than the supply.

MR. FELIX: No recross-examination.

There being no further questions, the witness was excused, and withdrew.

Gabriel La O, a witness called on behalf of the petitioners, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, and occupation.

A Gabriel La O, lawyer, 41 years of age, married, residing at 36 Brixton Hill, Santa Mesa, Manila.

Q Are you one of the attorneys for the petitioners in this case?

A Yes, sir, although I am not in charge of the case, as Mr. Gibbs is in charge.

Q Previous to the filing of the petition in the case, did you, as attorney for the petitioners, take part in any negotiations with reference to the modification or repeal of the law, Act. 2972? If so, state what they were.

MR. FELIX. I object to the question as being wholly immaterial to the case at issue.

A. I don't believe my activities were those of an attorney, but rather as Secretary of the Chinese Chamber of Commerce; and with respect to this matter, I remember that on one occasion the Governor-General called together in his office several representatives of the Chinese Chamber of Commerce, various represent-

atives of the Legislature, the Attorney-General, Mr. Villareal, and Mr. Wenceslao Trinidad, as the representative of the Bureau of Internal Revenue. The object of the Governor-General was to arrive at some compromise which would be satisfactory to both parties, instead of requiring that the present law be put into effect. In that conference, the sentiment of the representatives of the Legislature, who were Senator de Veyra and Representative Cuenco, was that they did not expect to be able to obtain from the Legislature any radical amendment of the law. Then the Governor-General asked Mr. Wenceslao Trinidad, in his capacity as representative of the Bureau of Internal Revenue of the Government, if it was true that an amendment to the present law had been proposed, with his knowledge and approval, in which it was provided that the sole requirement should be that the books of account of the Chinese merchants should be registered in the courts, with the pages of the books numbered, but without any requirement that they should be kept in any other language than Chinese.

MR. FELIX: Before going further, I desire to make it appear that I object to the testimony of this witness in so far as it refers to the expression of the points of view of other persons than the witness himself, inasmuch as the best evidence would be the testimony of those same persons. This objection is made without prejudice to such other objections as I may wish to make at the termination of the testimony of this witness.

MR. GIBBS: In reply to the statement of the fiscal, counsel for the petitioners states that the tes-

timony is in the form of an admission on the part of the opposing party as to the lack of necessity for the law in question.

MR. FELIX: In reply to that statement, I desire to call the attention of the court to the fact that so far as concerns the expression of the point of view of one of the respondents, which the attorney for the petitioners considers is an admission of the lack of necessity for any such law, Mr. Wenceslao Trinidad is not a part of the Legislature.

Q. Please continue your testimony from the point where you were interrupted.

A. Mr. Wenceslao Trinidad answered the Governor-General in the affirmative. Then the Governor-General asked him if he considered that the interests of the Government would be protected with that amendment, and he answered, "Yes." The Governor-General then addressed himself to the members of the Legislature, and he asked them, "Isn't it true that in these matters you should be guided by the technical men of the Government, and isn't it true that the technical man in this matter is really Mr. Wenceslao Trinidad?" Senator de Veyra replied to the Governor-General that the question was not one of the reasonableness or unreasonableness of the law, but one of the possibility or the impossibility of the Legislature's approving a radical amendment. He furthermore stated that he did not have the courage to sponsor in the Upper House the passage of the proposed amendment to which I have referred, because it had become unpopular.

Q. About what was the date of this conference?

A. I don't remember—I have a very bad memory for dates—, but I think it was when the Legislature was in one of its extra sessions.

Q. Of the present year?

A. Yes, of this year.

CROSS-EXAMINATION BY MR. FELIX:

Q. Did you not, as an attorney, inform the Governor-General or that conference that amendment was unnecessary because there is at present a provision in the Code of Commerce which requires the submission of mercantile books of account to the justice of the peace for his certification and for the numbering of the pages?

A It wasn't up to me to defend the interests of the Government or of the Legislature. The Attorney-General was there for that purpose; but I desire to call your attention to one thing, and that is that although it is true that there are provisions of the law covering that point, there is no penalty attached.

MR. FELIX: I move that the entire testimony of this witness be stricken out, on the ground that such testimony is not the best evidence of the facts which are the subject of that testimony.

There being no further question, the witness was excused, and withdrew.

The hearing was then, at 4:30 o'clock p. m., continued until Friday, September 28, 1923, at 2:30 o'clock p. m.

Friday, September 28, 1923.

The hearing was resumed at 2:30 o'clock p. m., the commissioner, the attornneys for both parties, and the reporters being present.

W. W. Larkin, a witness called on behalf of the petitioners, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q State your name, age, residence, and occupation.

A W. W. Larkin, 43 years of age, public accountant, living at 232 Calle Alonzo, Malate, Manila.

Q How long have you lived in the Philippine Islands?

A Since September 27, 1903.

Q What business have you been engaged in during that time?

A From that time until March, 1911, in the government service, about one year of which was as assistant property clerk in what is now the Bureau of Navigation—the old Bureau of Coast Guard and Transportation—, and from 1904 to 1909 audit clerk in the Bureau of Audits; from 1909 to 1911, chief accountant of the Bureau of Public Works; from 1911 to date, public accountant.

Q During your career in the Philippine Islands, to what extent have you come in contact with the merchants and business men of the Philippine Islands?

A During the time that I was with the Government, I ditn't come in very close contact with the merchants and business men of the islands, but from the time I began working as a public accountant, I have been in more or less close contact with various firms in Manila and the provinces.

Q Has your profession as public accountant brought you into contact with the bookkeepers and would-be bookkeepers of the Philippine Islands?

A Naturally, being a public accountant, I would come into

contact with the bookkeepers employed in the various firms which we have investigated or audited, and also the nature of my business is such that a great many bookkeepers come to my office seeking employment; and as Chairman of the Board of Accountancy since its establishment this year, I have come into more or less close contact with bookkeepers troughout the islands.

Q How many schools or colleges, as far as you know, are teaching bookkeeping in the Philippine Islands?

A I don't know how many schools are teaching bookkeeping, but those which give a fairly complete course are probably limited to less than a dozen.

Q Will you name the schools that are teaching bookkeeping in a competent way?

A Well, I don't know that I can name all of them. There are a few as to the courses of which I have more or or less knowledge; for instance, the Philippine School of Commerce, University of the Philippines, the Jose Rizal College, the Cosmopolitan Business College, the International Correspondence Schools, the La Salle Extension University Correspondence School. I believe the Ateneo de Manila and I think the De la Salle University teach bookkeeping, and a few high schools in the provinces have bookkeeping courses—I don't know just how many.

Q Can you state approximately how many graduates are turned out each year?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to answer it.

A Well, I have ascertained that there are approximately one hundred graduates of the Manila schools during

the last year. How many there are in the provinces, I don't know.

Q How much time, in your opinion, is necessary for a graduate of ordinary intelligence of a bookkeeping department of a business college to spend in subordinate positions in practical bookkeeping before being qualified to take charge of the books of account of a merchant?

MR. FELIX: I object to the question on the ground that it assumes a fact not established in the testimony of this witness.

A That would depend considerably on the nature of the business of the books of which he assumed charge. Some businesses require very simple bookkeeping, and probably six months in a subordinate capacity would be sufficient, while for others it sometimes takes a year or longer. It would also depend a great deal on the ability of the bookkeeper and the training which he had received.

Q With the present facilities for training bookkeepers, how long, in your opinion, would it require to prepare five thousand bookkepers capable of taking charge of the books of account of the Chinese merchants?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to answer it.

A With the basis of the average high-schools education, I would think that a bookkeeper should have at least two years' training in school before assuming charge of the books of account of an average-size firm.

Q And how long would they have to occupy subordinate positions before assuming charge of such books?

MR. FELIX: I object to the question on the same grounds.

A Usually bookkeepers, on leaving school, enter in a subordinate capacity, and some of them remain there indefinitely. Others are capable of being promoted within a very short time. I would say it would be an average of six to eight months, or one year, depending on the nature of the business.

Q Taking into consideration the present facilities for teaching bookkeeping in the Philippine Islands and the approximate number of graduates of bookkeeping departments who are turned out each year, how many years, in your opinion, would it take to prepare sufficient Filipino bookkeepers competent to take charge of merchants' books of account for from ten to fifteen thousand Chinese merchants?

MR. FELIX: I object to the question on the ground that the witness has not shown himself to be qualified to answer it.

A At the present rate, which is probably, at the outside, not more than 250 graduates a year in the islands, it would take a great many years.

Q And if you attempted to calculate those years, you would also have to take into consideration the ordinary demand for bookkeepers outside of the Chinese merchants, would you not?

MR. FELIX: I object to the question on the ground that it is leading.

A Yes, sir.

Q From your experience in the Philippine Islands as an accountant, and from your knowledge of bookkeepers and accountants, wil you state whether or not the demand for bookkeepers has been equal to the supply each year—I mean competent bookkeepers?

MR. FELIX: I object to the question on the ground that the witness has not so far shown that he is qualified to give an answer to it.

A There does not appear to have been a sufficient supply of competent bookkeepers.

Q And that is entirely outside of whatever demand might be created by the enforcement of Act No. 2972?

MR. FELIX: I object to the question on the ground that it is leading.

A Yes, sir.

Q What salaries do Filipino bookkeepers receive who are capable of taking charge of the books of a merchant?

MR. FELIX: I object to the question on the ground that the witness has not shown himself to be qualified to answer it.

A Filipino bookkeepers in Manila are receiving salaries all the way from ₱50.00 a month. The average for a small business is probably between ₱100.00 and ₱200.00.

Q Now, referring exclusively to those who took charge of the books of account of a merchant, what whould be their salaries?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to answer it.

A On an average, I would say ₱200.00 a month.

Q What salaries do American or English or Spanish bookkeepers receive who are capable of taking charge of the books of account of a merchant, in the Philippine Islands?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to answer it.

A American bookkeepers are receiving from ₱250.00 to ₱700.00 a month.

Q Are there any unemployed American, English or Spanish bookkeepers in the Philippine Islands qualified to take charge of the books of account of a merchant?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to answer it.

A Probably there are a few; I don't imagine, though, that there are more than half a dozen, and the majority of those are men who have lost positions through drink, or various causes.

Q And what would you say, Mr. Larkin, as to the possibility of finding any considerable number of unemployed competent bookkeepers in the provinces?

MR. FELIX: I object to the question on the ground that the witness has not shown himself qualified to answer it.

A I am not so familiar with the provinces, other than that most of the bookkeepers who fail to obtain employment in the provinces drift into Manila seeking employment here, and we come in contact with them frequently in that manner.

MR. FELIX: I move to strike out the entire testimony of this witness on the ground, first, that it is entirely immaterial to the case at bar, and, second, that the witness is not qualified to give an accurate answer to a portion of the questions put to him.

CROSS—EXAMINATION BY MR. FELIX:

Q Mr. Larkin, do you speak Spanish?

A Not very well.

Q But you speak Spanish?

A Well, I would rather not attempt any testimony in Spanish.

Q I didn't mean whether you could give testimony in Spanish.

A Well, I have a working knowledge of Spanish.

REDIRECT EXAMINATION BY MR. GIBBS:

Q Could you keep books in Spanish yourself?

A I never attempted it; I have examined a number of books in Spanish and was able to understand them.

Q Mr. Larkin, have you had any experience in the examination of Chinese books of account?

MR. FELIX: I object to the question on the ground that it is immaterial.

A I have had some.

Q What was the result of your examination of Chinese books in so far as the accuracy of the books examined was concerned?

A Well, about the same as other books kept by other nationals, with the probable exception that the Chinese go into more detail in keeping their books—more descriptive details of the transactions. The books which I have examined in Chinese have been kept by the double-entry system, identical with our present modern system in theory, and they are supposed to be self-balancing.

Q How many sets of Chinese books of account have you examined?

A Well, I don't know; it has been over a period of about 12 years, and from time to time I have gone in, usually for specific purposes and not necessarily for a complete audit of their accounts—making up income-

tax returns, principally, and reports for the banks. I had occasion to install an English system in a few Chinesee firms, some of which continued to keep one set of books in Chinese, while another force of clerks kept their books in English; and I know in one instance, after the English set was installed and run for one period, when the report was taken off the English set and the Chinese bookkeeper went out to compare it with his set which he had kept in Chinese, they agreed to the figure, and he was very much surprised that such was the case; which would indicate that the Chinese system in that particular case was equally as good as the English system.

Q Have you had occasion to make examinations of the books of Chinese merchants for the purpose of reporting on their financial status, and if so, relate the circumstances.

MR. FELIX: I object to the question on the ground that it has already been answered.

A I have had a very limited experience in that line. As I said before, most of the work for the Chinese has been in making up income-tax returns and in rearranging their statements in such form as to comply with the requirements of the banks, without going into detail as to the accuracy of the figures submitted by the Chinese.

Q In such examinations as you have made, what have been the results so far as the balancing of the books was concerned?

MR. FELIX: I object to the question on the ground that it is immaterial.

A I have awalys found them in balance.

MR. FELIX: No further questions.

There being no further questions, the witness was excused, and withdrew.

MR. GIBBS: I offer in evidence a certified copy of a communication of Alberto Barretto, Secretary of Finance, to the Honorable President of the Senate, dated January 12, 1923, recommending the amending of Act No. 2972, and which, taken together with the proposed amendment, I ask be marked "Exhibit I."

(The document was marked as requested.)

MR. FELIX: I reserve the right to object to the admission of this document until after I have read it.

MR. GIBBS: I also offer in evidence a certified copy of a communication from Alberto Barretto, Secretary of Finance, to His Excellency the Governor-General, dated December 16, 1922, recommending the amendment of the Accounting Law, Act No. 2972, and the explanatory note and the proposed amendment accompanying the same, which I ask be marked "Exhibit J."

(The document was marked as requested.)

MR. FELIX: I make the same reservation of the right to object to the admission of this document until after I have read it.

MR. GIBBS: I offer in evidence a certified copy of pages 63 to 71 of the report proceeding of the House of Representatives of the Philippine Islands, of the 7th of February, 1921, referring to Act No. 2972, and ask that it be marked "Exhibit K."

(The document was marked as requested.)

MR. FELIX: I make the same reservation of the

right to object to the admission of this document until after I have read it.

MR. GIBBS: I also offer in evidence a certified copy of pages 3, 4, 5, 15, 16, 19, 25, 26, 27; 28; 29; 45, 46; 47, 48 and 49 of the proceedings of the House of Representatives of the 12th of November, 1921 referring to Act No. 2972, and ask that it be marked "Exhibit L."

(The document was marked as requested.)

MR. FELIX: I make the same reservation of the right to object to the admission of this document until after I have read it.

MR. GIBBS: I also offer in evidence a certified copy of a communication dated at Peking, China, April 28, 1921, and directed by United States Minister Crane to the Secretary of State at Washington, reporting the protest of the Chinese against Act No. 2972, and ask that it be marked "Exhibit M."

(The document was marked as requested.)

MR. FELIX: I make the same reservation of the right to object to the admission of this document until after I have read it.

MR. GIBBS: I offer in evidence a certified copy of a communication of Frank McIntyre, Chief of the Bureau of Insular Affairs, dated July 14, 1922, directed to Governor-General Leonard Wood, requesting that Act No. 2972 be repealed, and ask that it be marked "Exhibit N."

(The document was marked as requested.)

MR. FELIX: I make the same reservation of the right to object to the admission of this document until after I have read it.

MR. GIBBS: I also offer in evidence a certified copy of a cablegram directed by Frank McIntyre, Chief of the Bureau of Insular Affairs, to Governor-Leonard Wood, under date of October 10, 1922, requesting the repeal of Act No. 2972, and ask that it be marked as "Exhibit O."

(The document was marked as requested.)

MR. FELIX: I make the same reservation of the right to object to the admission of this document until after I have read it.

MR. GIBBS: I offer in evidence a certified copy of a letter from Representative Dyer, dated August 16, directed to Governor-General Leonard Wood, and a photostatic copy of a letter signed by the Committee on Insular Affairs of the House of Representatives and a large number of other Congressmen of the United States, recommending and requesting the repeal of Act No. 2972, and ask that it be marked "Exhibit P."

(The document was marked as requested.)

MR. FELIX: I make the same reservation of the right to object to the admission of this document until after I have read it.

The hearing was then, at 4:50 o' clock p. m., continued until Thursday, October 19, 1923, at 3:00 o'clock p. m.

The hearing was resumed at 3:00 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Gabriel La O, who had previously testified, was recalled as a witness on behalf of the petitioners, reminded by the commissioner that he was still under oath, and testified as follows:

DIRECT EXAMINATION BY MR. GIBBS:

Q You have already stated that you are the Secretary of the Chinese Chamber of Commerce, Mr. La O.

A Yes, sir.

Q What is your nationality, Mr. La O?

A I am a citizen of the Philippine Islands.

Q Mr. La O, as Secretary of the Chinese Chamber of Commerce, what do you know about the efforts of the respondent Collector of Internal Revenue or of his agents in the provinces to enforce Act No. 2972 after this prohibition action was begun?

MR. FELIX: I object to the question on the ground that no foundation has been laid for it. Furthermore, this would be a matter for an action for contempt before this court, and it can in no way constitute material and competent evidence in this case.

A After this action was filed and after the petitioners had obtained the issuance of the prohibitory order, the delegates would constantly receive in the Chinese Chamber of Commerce telegrams informing us that the agents of the Bureau of Internal Revenue were attempting to enforce compliance with the law which it is sought to oppose in this action—sometimes the enforcement of the law itself, and at other times, if I remember correctly, requiring that one of the circulars of the Bureau of Internal Revenue be complied with to the extent that the books required in the said circular be kept according to the provisions of this act which it is sought to oppose in this case. Every time we received telegrams of this nature, we would go—sometimes I would go alone, at other

times I would go with the President of the Chinese Chamber of Commerce, and at other times with Mr. Mr. Albino Sy Cip—to see the Collector of Internal Revenue, Mr. Posadas, and this gentleman always heard and listened to our statements, giving the necessary orders to the effect that such Internal Revenue agents in the provinces should not require compliance with the law or with the circular referred to. Mr. Posadas finally agreed to give greater publicity to the prohibitory order suspending the enforcement of this law while this action was pending, and he told us that he would have it published in the newspapers. On one occasion, when we wanted telegraphic advices sent to an assistant agent, he told us that he didn't have the funds with which to defray the cost of the telegrams, inasmuch as it was necessary to send various telegrams, and we then offered to pay the cost of the telegrams, and he, being in doubt as to whether that could or could not be done, consulted with the Auditor's office, and the Auditor's office told him that it could be done. Pursuant to that, we furnished the funds with which telegrams were sent to some of the agents in the provinces.

MR. FELIX: I ask that the entire testimony of this witness be stricken out on the ground that it is wholly immaterial and incompetent in this case.

Q Please state from what parts of the islands these telegrams came.

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A They were from the province of Tayabas, from the province of Bulacan, from Leyte, from Zamboanga, from

Dulag, from Butuan, from Davao, from Bacolod, Negros Occidental, from Lukban, Tayabas, from Boac, Marinduque, from Ormoc, Leyte, from Laoag, Ilocos Sur, from Tacloban, from Daet, Ambos Camarines, and I believe there were some from other towns, because there was a very considerable number of telegrams.

MR. FELIX: I ask that the answer of the witness be stricken out on the ground that it is wholly immaterial and incompetent in this case. I have no questions to ask of this witness. Now, in the session held on the 28th of September, 1923, the petitioners, through their sttorneys, offered in evidence Exhibits I to P, inclusive. With respect to Exhibit I, I object to its admission on the ground that it is immaterial, inasmuch as it is the purpose of this exhibit to establish the fact that the Secretary of Finance submitted to the Philippine Senate a proposed amendment to the Accounting Law. It is a duty that devolves upon the Legislature solely to consider the propriety or impropriety of amending the said act, Act No. 2972, and it did not desire to approve any amendment thereof. With respect to Exhibit J, I make the same objection as to Exhibit I, and I object further on the ground that it does not appear that any representative sponsored or supported the proposed amendment to the law or the explanatory note. The letter refers to two proposed laws, and only one is included therewith. The proposed law, which was omitted, was, according to what appears here, one that imposed a surcharge or penalty of 100% on the taxes due in the case of false or fraudulent returns. With respect to Exhibit K, I have no objection whatever, and

when the time comes for me to introduce my evidence, I will submit other documents which are very closely related to this exhibit. With respect to Exhibit L, I also would have no objection to those exhibits if it were introduced in its entirety; that is to say, this exhibit, or the document marked as Exhibit L, is not complete, inasmuch as page 2, which contains the letter of the Secretary of the Senate, and many other intervening pages, are missing. These missing pages contain parts of the discussion of the proposed law which had for its purpose the postponing of the date at which the Accounting Act, No. 2972, should be put into force. It seems that the pages containing the arguments for the said postponement have been left out. The object of presenting the record of the speeches delivered in any legislative body upon any proposed law is undoubtedly to show the feeling or the intention of the legislators, and this object is not attained by the presentation as evidence of only the speeches of those who favor a measure and suppressing the replies of those who oppose it. We therefore object to the admission of Exhibit L if it is presented in its present incomplete and mutilated form. With respect to Exhibit M, I object to its admission on the ground that it is wholly immaterial, incompetent and impertinent, and has no other object than to impress this Supreme Court with opinions which cannot be determinative in this case. I object furthermore because it is not the best evidence in itself of the facts therein alleged. With respct to Exhibit N, we make the same objection as to Exhibit M, and on the same grounds. With regard to Exhibit O, we make the same objection as to Exhibits M and N; and, finally, with regard

to Exhibit P, we make the same objection as to exhibits M, N, and O.

MR. GIBBS: I reserve the right to introduce the data which the court has ordered the respondnt Collector of Internal Revenue to furnish.

MR. FELIX: We have no objection to this reservation of right.

MR. GIBBS: I also wish it to appear in the record that I have been informed that the Chinese merchants of the City of Manila make certain payments for the maintenance of the Chinese schools, in proportion to the amount that they pay to the Bureau of Internal Revenue by way of sales tax; that the Chinese merchants have kept records of these contributions to the schools, but up to now we have not been able to find all of them, and we therefore do not know whether we will be able to introduce this evidence or not. I therefore reserve the right to introduce this evidence in case it can be found, to take the place of the proofs that we have demanded of the respondent Collector of Internal Revenue and which he has refused to furnish.

MR. FELIX: I object to the last portion of the statement of Mr. Gibbs, inasmuch as the Collector of Internal Revenue has not so far refused to furnish the data which the Supreme Court has ordered him to present. I wish to ask Mr. Gibbs a question: For how long do you make this reservations?

MR. GIBBS: I will be able to submit this before the termination of the presentation of the evidence for the respondents. In case we find these proofs, we can introduce them before the termination of the evidence for the respondents. With reference to

the statement by the attorney for the respondents, to the effect that the respondent Collector of Internal Revenue has not refused to furnish the data required by this Honorable Court, we wish to say that these statistics are more detailed and should give the details as to the sales made by each merchant, while, as I remember the order of the Supreme Court, it did not comprise a statement of the sales of each merchant.

MR. FELIX: With respect to the reservation of right, which is to be limited only to the period of the presentation of evidence on the part of the respondents, I also have nothing to say, although I wish to set forth at this time my objection to this evidence, on the ground that it is not the best evidence of the facts that it is attempted to prove by it, nor is there any guaranty as to its correctness.

MR. GIBBS: With the reservations above stated, the petitioners rest.

The hearing was then, at 4:20 o'clock p. m., continued until Friday, November 23, 1923, at 3:00 o'clock p. m.

SESSION OF NOVEMBER 12, 1923.

The above entitled cause came on for a continuation of the hearings on this 12th day of November, A. D. 1923, and the following proceedings therein were had, towit:

The same appearances were noted as at the previous sessions.

T. W. Perkin acted as reporter.

EULOGIO P. REVILLA, 38 years of age, married, Prosecuting Attorney of the City of Manila, residing at 904 Calle Georgia, a witness for the respondents, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. FELIX:

Q Are you one of the respondents in this case?

A Yes, sir.

Q Have you attempted to proceed against any Chinese for violation of Act 2972 except in the case of Yu Cong Eng, Criminal Case No. 25551 of the Court of First Instanc of Manila, and the case of Chan Hang Chu and Chang Bong Chong, Criminal Case No. 25550 of the Court of First Instance of Manila?

A No, sir.

Q Why did you present a complaint or order a complaint filed against them for violation of that Act?

A I ordered Mr. Felix to present two complaints against these accused, one in case No. 25550 and the other in case No. 25551. These were the only cases which were brought to the prosecuting attorney's office by the office of the Collector of Internal Revenue for supposed infraction of Act 2972, and the understanding was—

MR. GIBBS: Object to any testimony on the question of any understanding between the witness and the Collector of Internal Revenue, on the ground that same is hearsay, and it is not binding upon the petitioners in this case.

A (Continued) I state that the understanding between the office of the Collector of Internal Revenue and my office was that no more complaints were to be filed in the courts for alleged violations of Act 2972, against any other person, whether they be Chinese, Japanese or other national, outside of these two cases, because I had positive information that the ac-

cused in these cases were going to raise the question of the constitutionality of Act 2972, and in order that there would not be a multiplicity of cases on account of this Act, I wanted to wait until the courts first decided these two cases, as to the constitutionality or anti-constitutionality of this law before I proceeded to take criminal action against any other supposed violators of this law, so that the understanding between the two offices was that outside of these two cases no other cases would be filed, and that therefore the prosecuting attorney's office was not going to present any other criminal cases for supposed violation of Act 2972 in the courts of Manila.

Q Up to when?

A Until the courts of Manila or the Supreme Court later should resolve definitely if the said Act 2972 was constitutional or not.

MR. GIBBS: Move to strike the testimony of the witness as incompetent and not binding upon the petitioners in this case.

MR. FELIX: I object to this motion to strike.

Q Showing you these two documents, which I ask be marked as Exhibits 4 and 5, respectively, for the respondents, I ask you if you know what these two letters are?

A Yes, sir, they are two letters which I received on different dates from Mr. Trinidad, Collector of Internal Revenue, and the other from Mr. Posadas, when he was Deputy Collector of Internal Revenue.

Q Have these two letters anything to do with cases 25550 and 25551 of the Court of First Instance of the City of Manila?

A Yes, sir, they are the two letters which gave the office of the Prosecuting Attorney information of the alleged infraction of Act 2972 by these two accused who are now defendants in the courts of Manila.

Q Outside of these two letters, have you received any other letter from the Collector of Internal Revenue or any other office of the government denouncing infractions of Act 2972?

A No, sir, they are the only two letters received by the Prosecuting Attorney in connection with alleged infractions of Act 2972.

CROSS EXAMINATION BY

MR. GIBBS:

Q Was this understanding which you claim to have had with the Bureau of Internal Revenue had with Mr. Trinidad?

A Had with the head of that office.

Q Who was the head of that office?

A The first letter I received was signed by Mr. Trinidad, but the second was signed by Mr. Posadas. Of course I did not have a personal talk with Mr. Trinidad on this matter, but only with Mr. Posadas, because after the receipt of the second letter, Mr. Posadas was in charge of the Bureau of Internal Revenue at that time.

Q Mr. Trinidad was in active charge of the Bureau of Internal Revenue from a date previous to the enactment of Act 2972 up until some time between March 2nd and March 5, 1923?

A I think he was, yes, sir. He was the head of that bureau.

Q Was this undertanding that you speak of, a verbal understanding with Mr. Posadas?

A Yes, sir, verbal understanding.

Q Was it before or after the writing of these two letters, Exhibits 5 and 4?

A It was after the receipt of the second letter, the one signed by Mr. Posadas.

Q Where did this verbal understanding take place?

MR. FELIX: Objected to as immaterial.

A I remember that I had that verbal understanding in my office, the office of the Prosecuting Attorney, because Mr. Posadas came to see me about these prosecutions, I remember, more than twice.

Q This circular No. 82-A of the Attorney General, referred to in Exhibits 4 and 5, have you that circular?

A You mean Circular 82-A of the Attorney General?

Q Yes.

A We have a copy of the circular in my office. This circular refers to the procedure that we have to follow in regard to cases presented to our office by the Bureau of Internal Revenue, that we have to keep the office of the Attorney General informed of every step taken in any particular case referred to us by the Collector of Internal Revenue or by some other bureaus of the insular government.

Q Well, it is your duty as the city fiscal to prosecute if your investigation justifies it, all cases which are presented by the Collector of Internal Revenue?

A Yes, sir.

Q There was nothing in writing about this understanding between you and Mr. Posadas?

A No, there is none. I didn't deem it necessary.

Q It was just a personal understanding between you two gentlemen.

A Yes, sir, because at any rate I am the one who should decide in any particular case whether a complaint should be filed or not.

Q But there was absolutely nothing in writing concerning it?

A Nothing.

Q Have you exercised any control over the fiscals in the provinces?

A No, sir.

Q Was there any such verbal understanding with the provincial fiscals that you know of?

MR. FELIX: Objected to as completely immaterial. The witness is not competent to testify as to that.

A I did not have any verbal understanding with any provincial fiscal myself. I didn't know whether the Collector of Internal Revenue had or not.

Q If the only purpose of filing the complaints in the two cases mentioned in the letters Exhibits 4 and 5 was to test Act 2972, why did you file two complaints?

MR. FELIX: Objected to on the ground that it is based upon an erroneous supposition. The witness has not testified that the object of presenting these two complaints was to test the constitutionality of the law, but that he had information that the question of constitutionality was to be taken up in the courts.

A The alleged violations supported in these two letters came to the knowledge of the city fiscal's office almost at the same time, because I noticed that these letters were signed with a difference only of two days,

and I would have only filed perhaps one complaint in the courts if it was not for the insistence of one of the two accused in these two cases, I don't remember which one exactly, but to the best of my recollection it was the accused Chang Bong Chong, or Chang Bang Chong, but I am positive that one of the accused in these two cases when these two cases were under investigation in the fiscal's office by Mr. Felix, insisted on having a case filed against him in court.

Q So that the case against Chan Bong Chong was brought for the accused's special benefit, was it?

A No, I don't mean to say that. He insisted on having complaint filed as soon as possible, and in fact he has furnished the bond for his provisional release before the filing of the complaint, because we had recommended the amount of the bond to the clerk before we filed the complaint in that case. I am not sure whether that is the same one, the name.

Q This verbal understanding that you had with Mr. Posadas, was that before any of the complaints were filed?

A Mr. Posadas came to see me, as I said, more than twice, on account of these two cases, and I can not positively state now whether it was after or before the filing of the complaints, because he came to see me before the filing of the complaints and also afterwards, but I have determined, so far as the policy of my office is concerned, not to file more than these two cases, even in case the Bureau of Internal Revenue might report some other violations of the same law.

Q The complaints mentioned in the two cases, Exhibits 4 and 5, were file don the same date, were they not?

A I can't tell you. My office is filing a great number of complaints every day. If you will let me see the cases, perhaps I will be able to say. Judging from the numbers given to the two cases, which are consecutive numbers, it may be that these two cases were filed at the same time.

Q They must have been filed almost at the same time, must they not, judging from that fact alone?

MR. FELIX: Objected to as the witness is incompetent to testify as to that.

A It may be.

Q Who represented Chan Bong Chong in his insistence upon the filing of the complaint?

A As stated, I am not positive as to the name of the Chinese; I know he is one of the Chinese accused, but the attorney who came to see Mr. Felix and myself was, I believe, Quintin Paredes, who said he represented this accused at that time.

Q And he asked you as a favor to file the complaint against his client?

MR. FELIX: Objected to as immaterial.

A No, he didn't ask me to do it as a favor.

Q Then he ordered you to do it?

A Neither. He stated that he desired to raise the question of the constitutionality of the law in this case, so I knew therefore in advance that this question was to be raised, and from that point I decided not to preset many cases, because what was resolved in these two would establish the precedent that we should follow in other succeeding cases.

Q Refreshing your memory with the fact that the complaint was filed the 7th of March, that is, two days after the date of the letter, Exhibit 5, can you state if this understanding with the respondent was before or after the filing of the complaint?

A Possibly it was after the filing of the complaint. By thinking it over I remember, because I knew in advance that the question of the constitutionality of the law was to be raised in court in these cases, so I made my decision not to present any more, and naturally I wanted to present the two so as to get rid of these two cases of the Internal Revenue Bureau, and at that time I told Mr. Posadas not to refer any other cases, because I would not take any action on cases coming to me later.

Q And this suggestion made by you was, according to your best memory, before the filing of the complaint?

A After receiving the letter, but before filing the two complaints.

Q So that the understanding that you speak of was, as a matter of fact, a suggestion made by you to Mr. Posadas?

A Yes, sir, a suggestion that Mr. Posadas accepted, as I understand it, because he did not send me any further cases, denouncing any other infractions of the same law, before even the filing of the application for injunction.

Q You didn't have much time to make use of this understanding before the issuance of the injunction?

A The issuance of this injunction was not until several days after the filing of the two complaints referred to.

Witness excused.

WENCESLAO TRINIDAD, assistant general manager of the Philippine National Bank, married 43 years of age, residing at 1148 Calle Mabini, Manila, a witness for the respondents was duly sworn, and testified as follows:

DIRECT EXAMINATION BY

MR. FELIX:

Q Are you one of the respondents is this case?

A Yes sir.

Q What position did you hold in the Bureau of Internal Revenue?

A I was Collector of Internal Revenue.

Q Up to what date?

A Up to the first days of April of this year.

Q Showing you this document marked Exhibit 4, I will ask you from whom is this comunication?

A This is my comunication, addressed to the prosecuting attorney of the City of Manila.

Q Signed by you?

A Signed by me.

Q Why did you address this letter, Exhibit 4, to the prosecuting attorney of the city?

A I addressed this letter after the name of the person who is mentioned in same was given to me by the attorney of the Chinese community, so that a test could be made of the constitutionality of the law.

Q Why did the attorney for the Chinese community give you that name?

A That is the name they gave me to be prosecuted for infraction of Act 2972?

Q Did you have any conference with the Governor General

of the Philippine Islands at which Mr. Gabriel La'O, Attorney General Villareal, Senator Vera, Representative Cuenco and various representatives of the House of Representatives were present?

A Yes, sir.

Q In this conference did you favor the amendment of Act 2972 in the sense of requiring the books of account of merchants to be paged and registered in the court of the Justice of the Peace, so that the merchants should not be required to keep their books of account in Spanish, English, or any other local dialect?

A What I remember is that in this conference there was discussed a proposed amendment of the law, to which the Chinese community objected.

Q Will you please state how did this conference take place?

A The conference was held with the object of finding a means of amending the law to the satisfaction of all parties concerned, and I remember perfectly that the amendment which was discussed that morning was one to which the Chinese community objected. The Governor General explained to the representatives of the community that the executive branch of the government was finding difficulty in securing desirable legislation, but that he desired that the Chinese community study carefully this proposed amendment and that they give their answer in twenty four hours, that is to say, the following morning. In the afternoon of the following day the Governor General called me and he told me that the Chinese community didn't accept the proposed amendment.

MR. GIBBS: Move to strike the statement of the witness in connection with any conference with the

Governor General after the conference held in the presence of Mr. La'O and about which Mr. La'O testified in his testimony, because it is hearsay and incompetent and not binding upon the petitioners.

MR. FELIX: I take advantage of this opportunity in which the representation of the petitioners make this objection, to make of record that all the testimony of the witness referring to the conference had with the Governor General, is completely immaterial and impertinent in the case at bar, as well as the testimony of Mr. La'O in this case. In presenting this witness to testify regarding this conference, this representation does not renounce its objection presented at that time, and only submits the testimony of this witness to clarify certain facts in case the Supreme Court desires to take them into account.

MR. GIBBS: In answer to the observations of the city fiscal, I wish to state that the distinction between the admissibility of the testimony of Mr. La'O on the subject of that conference and of the testimony of this witness with reference to the subsequent conference at which Mr. La'O was not present is perfectly clear, and that is, that the statement of Mr. Trinidad to which Mr. La'O testified constituted an admission against interest, whereas the attempt of the witness to now testify with reference to a subsequent conference with other parties is the purest kind of hearsay and incompetent.

MR. FELIX: I desire to make the further observation, that the witness is not an interested party in the amending or changing of Act 2972. He is only an official of the government; he could have no in-

terest whatsoever in the decision. The only entity which would be interested in the decision of whether Act 2972 is constitutional or not would be the Legislature.

Q Showing you this document, marked for identification as Exhibt 3, I will ask you if you remember having written an endorsement of that tenor.

A Yes, I remember that this endorsement was written by me.

Q From the 22nd of November, 1921, in which you wrote this endorsement, up to this time, have you changed your point of view and conclusions arrived at therein?

MR. GIBBS: Objected to, as not only the letter Exhibit 3, but also the points of view of the witness, are completely immaterial and do not constitute a manifestation of fact which is admissible in any case. The document Exhibit 3 refers to a supposed certificate, and cannot substitute a statement of facts by the witness; that Exhibit 3 is not an official document, and the witness has not nor has he had power as Collector of Internal Revenue, to require such certificate, and the said certificate is not binding upon the interests of the petitioners.

MR. FELIX: I desire to state that this document, Exhibit 3, is an official copy duly certified under the seal of the Internal Revenue, and with the signature of the present Acting Collector of Internal Revenue. In regard to the opinions of Mr. Gibbs, it surprises me that this question is raised, because in the long list of witnessess for the petitioners, the greater part of them have not done more than to state

their opinions without any basis whatsoever. Here it has been attempted to establish that the witness is inclined to favor the amendment of Act 2972 in a manner satisfactory to the Chinese community, and this Exhibit 3 demonstrates that much before the coming into force of Act 2972 the witness set forth his points of view regarding the convenience of this law.

A No, sir.

CROSS EXAMINATION BY

MR. GIBBS:

Q This letter, Exhibit 3, I see is dated June 30, 1923. At that time you had ceased to take any active part as Collector of Internal Revenue, had you not?

A That is correct. I have ceased to be.

Q At that time you had become Vice President of the Philippine National Bank?

A Assistant General Manager.

Q And this letter, you had personally nothing to do with preparing this letter, Exhibit 3?

A That paper contains a quotation of an endorsement prepared by me a long time ago.

Q The endorsement which is copied in Exhibit 3 is an endorsement which was made by you in the year 1921?

A That is correct.

Q You state here that there are also other business men who did not keep their books of account either in English or Spanish; these are Germans, Japanese, Syrians, and Hindus. Do yoh know of any German

firms who did not keep their books in English or Spanish at the time you wrote that endorsement?

A The facts as stated in that endorsement were taken from reports of our men in the field, our inspectors or agents outside the office.

Q And these reports are on file in your office?

A They must be.

Q And you have no personal knowledge of the facts contained in these reports of the men in the field?

A No, sir.

Q You personally have no knowledge of any Germans, Japanese, Syrians, or Hindus who don't keep their books in English or Spanish?

A I have some personal knowledge about certain Japanese, Hindus, and other nationalities who do not keep their books in English or Spanish.

Q How do you know that?

A I happened to see them.

Q Did you see them in the course of an inspection, or by mere accident?

A By mere accident.

Q You personally have never taken part in any inspection of the books of account of merchants?

A Except those that are brought to the office for close examination, but not outside the office.

Q Well, have you examined any of those?

A Brought to the office?

A Yes.

A Well, I opened and looked at the entries to see when there is a dispute about the claims of our agents.

Q Well, don't you have regular inspectors who take charge of that?

A Yes.

Q And don't you accept their reports as correct?

A I do, but when there is a claim on the part of the tax payer then it becomes my duty to hear the two sides and that is the opportunity I get see the books.

Q But you never, in any of those official examinations, you never saw any German, Japanese, Syrians, or Hindu books of account?

A I have seen Syrian; I have seen Japanese.

Q What kind of characters were the Japanese books kept in?

A It looks like Chinese. Japanese characters.

Q The Japanese written character is the same as the Chinese written character?

MR. FELIX: Objected to as the witness is not competent to testify as to that.

A It looks like it, but I don't know whether they are the same.

Q Well, don't you know from general information that the Chinese and Japanese written characters are the same?

MR. FELIX: Objected to as the witness is not competent to answer as to that.

A That is what they say, but I don't know.

Q Now all the other data containd in this so-called certificate of June 30, 1923, marked Exhibit 3, was compiled by you from the records of your office?

MR. FELIX: Objected to, unless the attorney specifies as to what data he refers to; there may be confusion on the part of the witness.

A The figures contained in the second paragraph were taken from our records in the office, as well as those contained in paragraph 4.

Q You state here: "The Bureau of Internal Revenue has up to this time employed seventeen Chinese accountants, two Hindus, and one Japanese". What was the largest number of Chinese accountants you employed at any one time?

A I can not answer that question. I do not remember exactly.

Q Well, during your regime as Collector of Internal Revenue, what was the greatest number of Chinese accountants you had employed in the Bureau to the best of your recollection,

A At one time?

Q At any one time?

A About eight.

Q At what particular time was that?

A There is not any particular time. As fast as we can get the services of competent men.

Q How many Chinese accountants did you find it convenient to employ for the purpose of inspecting the books of account of Chinese merchants?

MR. FELIX: Objected to as lacking proper basis.

A I know that we have been authorized to appoint more Chinese than what the Bureau has.

Q What is the total number of inspectors you have in the Bureau of Internal Revenue, of all nationalities?

A I would say around one hundred.

Q How many Filipinos?

A About eighty five.

Q And how many Chinese?

A Around eight. The Chinese are not inspectors, but are accountants; they work with the inspector proper.

Q You have at present employed about eight Chinese accountants?

A That used to be our number. I do not know how many now.

Q Was that the number you had employed at the time you ceased active management of the Bureau?

A I do not know exactly whether that is the same number.

Q But to the best of your recollection, the number of Chinese accountants usually employed by the Bureau has been eight?

A Yes.

Q What languages do the Filipino inspectors speak?

A English, Spanish, or local dialect.

Q Do you know how many of them speak English?

A I would say about ninety five percent of them, the inspectors or agents.

Q How many of them speak Spanish

A All.

Q All of them speak Spanish?

A Yes, sir.

Q Before terminating my examination with reference to your system of inspection, I wish to ask you particularly about the conference with Governor Wood, at which Mr. La'O was present. If I understood your testimony correctly, the amendment which was proposed at that conference was one which provided for the paging and registration of the books of account of the Chinese merchants, in such form as to avoid the necessity of their keeping books in a language other than Chinese; is that true?

A I do not think that was the amendment discussed. I think it was the one requiring translation. I do not remember exactly what was the amendment discussed that morning.

MR. GIBBS: Mr. La'O being better informed as to that conference than myself, I wish him to conduct the cross examination upon that point.

CROSS EXAMINATION BY

MR. LA'O:

Q Is it a fact, Mr. Trinidad, that this amendment to which you refer which was refused by the Chinese community was one proposed by Senator de Vera?

A I don't know if it was precisely that same one, or if it was revised by the Secretary of Justice.

Q Is it not a fact that in this conference you were asked by the Governor General if by one of the amendments the interests of the government were protected?

MR. FELIX: Objected to unless it is specified to which amendment the question refers.

MR. LA'O: I withdraw the question.

Q Isn't it a fact that the Governor General asked you, referring to one of the amendments, if with that the interests of the government would be protected?

A Yes, sir.

Q And you answered affirmatively, isn't that a fact?

A Yes, sir.

Q Isn't it a fact that amendment was that one which specifically required that the books be paged and that they be registered, without requiring that they be kept in any particular language?

A I believe that that was the last amendment objected to by yourselves. That is the one the Governor asked me about.

Q If that were the case, don't you think that the Governor would have had to ask the Chinese?

MR. FELIX: Objected to as argumentative.

A I believe that the Governor-General gave time to the representatives of the Chinese community to study carefully this proposition, this proposed amendment, and that they answer it the following day, and I remember now that personally I spoke to Mr. La'O to use his influence among the Chinese community so that they should accept this proposed amendment so long as the Governor General was apparently very much inclined to put the Act in force in a manner that would not be prejudicial to anyone, and that last amendment was one which apparently was acceptable to the members of the Legislature who were present.

Q Do you mean to say that you didn't remember which amendment was referred to when the Governor-General asked you if by the amendment the interests of the government would be protected? State if you remember positively.

A That question took place in the last conference held in the office of the Governor-General, and in that conference no other amendment was discussed except that to which the Chinese community objected.

CROSS EXAMINATION (Cont'd) BY

MR. GIBBS:

Q Who is the direct superior of the Collector of Internal Revenue among the officials of the government of the Philippine Islands?

MR. FELIX: Objected to as immaterial. It is specified in law.

MR. GIBBS: It is a preliminary question.

A The Secretary of Finance and the Governor-General.

Q The direct superior of your office is the Secretary of Finance, is he not?

A Yes, sir.

Q And at the time of the proposed amendment of Act 2972, that secretary was Secretary Barretto, was it not?

A Yes, sir.

Q And when he prepared laws or proposed amendments of laws, affecting the interests of your Bureau, he submitted them to you, did he not?

MR. FELIX: Objected to as immaterial.

A Or I am asked to discuss them with him personally.

Q Before proposing any law or amendment of law affecting your Bureau he always consulted with you as the officer immediately in charge of that Bureau, does he not?

A Yes, sir.

Q Do you remember the proposed amendment which consisted in paging and registering the account books of Chinese merchants without requiring them to keep the books in a language other than their own?

MR. FELIX: Objected to as completely immaterial. Even though a proposed amendment to the law was submitted to the Legislature in that sense, the Legislature did not approve it.

A I think there has been one proposed amendment of that kind.

Q Did Mr. Barretto submit that proposed amendment to you for your approval?

MR. FELIX: Objected to as lacking foundation.

It does not appear that Mr. Barretto has submitted any such amendment.

MR. GIBBS: It has been offered in evidence.

Q Referring to this Exhibit "J" I will ask you to state if that proposed amendment was submitted to you by Secretary Barretto for your approval before it was recommended to the Legislature?

MR. FELIX: Objected to on the ground that the question is not in line with the direct examination. This representation has no objection to the petitioners making this witness their own, even after their testimony has all been put in, but we object to their puting direct questions on cross examination.

MR. GIBBS: This question is asked directly as to the testimony of the witness regarding the conference with the Governor-General.

A No. I remember that this proposed amendment has been prepared by the Department of Finance and requested the Secretary of Finance to recommend its passage to the Philippine Legislature.

Q How did you ascertain that fact?

A Simply because this was prepared by the Department of Justice with my cooperation. Then I took these papers along with me to the Secretary of Finance.

Q So that that proposed amendment, Exhibit J, was prepared by the Department of Justice with your cooperation?

A Yes, sir.

Q So that you were in effect the author of that proposed amendment yourself?

A I just gave the practical side of the working of the law.

Q So that at the time you assisted the Department of Justice in preparing that proposed amendment, Exhibit J, you believed that that would answer the purposes of Act 2972?

A Well, not exactly. Here is the point. This was prepared upon the request of the Governor General.

Q When you prepard this proposed amendment, Exhibit J, in cooperation with the Bureau of Justice, you did so believing that you were preparing a law which would answer the purposes of the Government, did you not?

A Yes, sir.

Q And you know why the Secretary of Finance, Mr. Barretto, who presented that proposed amendment, was not able to obtain its passage by the legislature?

MR. FELIX: Objected to as completely immaterial.

A I do not know.

MR. FELIX: I desire to state at this point that this representation insists in its objection made previously, in that in the judgment of this representation the only authority competent to testify as to the convenience or inconvenience of something which is proposed to be made into law is the Legislature, and no other member of the government.

Q What official of the Department of Justice assisted you in preparing this proposed amendment?

MR. FELIX: Objected to as immaterial.

A Secretary Santos himself.

Q Was Secretary of Finance Barretto called into conference before he finally recomended it?

A No. I explained to him the object of the legislation.

Q And after you and Secretary Santos prepared the proposed amendment, Exhibit J, did you submit it to the Governor-General before it was signed by Secretary Barretto?

A. No. the proposed amendment after it was signed by Secretary Barretto was sent to the Governor General who transmitted it to the Legislature.

Q Now, at the conference at which Mr. La'O was present, isn't it a fact that the Governor General, referring to this proposed amendment, Exhibit J, asked you if in your opinion that would not serve the purposes of Act 2972?

MR. FELIX: Objected to as already answered.

A I don't think so.

Q You are not certain about that fact, are you, Mr. Trinidad?

A I am almost certain for this reason, that in that meeting we discussed the other amendment, the other proposed amendment, not this one.

Q Do you remember the date of that conference?

A I do not remember the date, but it was a few days before the closing of the legislature.

Q Don't you remember approximatley when the legislature adjourned?

A I don't remember.

Q To whom did the Governor General direct his suggestion or instructions with reference to the drafting of an amendment of Act 2972, before you and Secretary Santos drafted the proposed amendment, Exhibit J?

MR. FELIX: I desire to state that my previous objection refers to all questions of this nature.

A I do not know, but this amendment that you are refer-

ring to was prepared by us after a conference with the Governor-General. I don't know, I don't remember whether he gave instructions to somebody to prepare another amendment.

Q Was that the conference with the Governor General at which Mr. La'O was present?

A The last conference, no. It was one of the first conferences we had with the Governor General.

Q How many conferences was held with the Governor-General before the one at which Mr. La'O and yourself were present?

A I don't remember.

Q At that conference, did the Governor General request you and Mr. Santos to draft an amendment which would serve the purposes of Act 2972?

MR. FELIX: Further to the objections already made, I make a special objection to this question on the ground that it does not specify to which amendment this question refers.

MR. GIBBS: I am referring all the time to one amendment, Exhibit J.

A We have been instructed to draft that amendment after explaining to us several reasons which the Governor-General has.

Q Isn't it a fact, Mr. Trinidad, that in addition to the Governor General arguing with the representatives of the Chinese community to the effect that they should accept an amendment, he was also arguing with the members of the Legislature to accept another amendment?

A Yes, he was discussing (arguyendo) with them that they should accept the amendment officially submitted by him.

Q You refer to the amendment Exhibit J?

A Yes, sir.

Q And Senator de Vera answered that he could not accept that amendment because he was certain that it would not be approved by the Legislature?

A I am not sure if it was Senator de Vera. I know that one of the members of the House of Representatives was there.

Q But before he answered, did not the Governor General ask you if that would not protect the interests of the government?

MR. FELIX: Objected to as already answered.

A No, sir, it was not to that amendment. Immediately after addressing the representatives he addressed you (Mr. La'O) asking you to submit to the consideration of the Chinese community the amendment which would be found acceptable by the Legislature.

Q And by the departments of the government?

A I don't know if he mentioned the departments of the government or not.

Q At any rate, the amendment which the Governor General wanted the Chinese community to accept was one that would be approved by the legislature, by the department secretaries, and by yourself, isn't that a fact?

A No, sir.

Q Now referring to Exhibit J, this amendment was one approved by your department and by the Secretary of Finance, isn't that a fact?

A Recommended by him.

Q And also accepted by the Chinese community, isn't that a fact?

A I don't know if it was accepted.

Q But the members of the Legislature didn't want to accept it?

A Yes, sir.

Q Do you remember after the Governor General asked you if such amendment would carry out the purposes of the government, that he addressed some of the members of the Legislature in view of your affirmative answer, if the technical department approved it why they didn't approve it?

MR. FELIX: Objected to as immaterial and not showing which amendment was referred to.

A I don't remember that. I remember that we discussed that last amendment, which was found acceptable by the members of the legislature.

Q But you yourself said here that they discussed several amendments?

A Yes, sir.

Q And now you don't want to remember any more than just one?

MR. FELIX: Objected to.

A That was the last one which the Governor submitted to you (Mr. La'O), and asked you to accept it in twenty four hours.

Q That is true, but before that the Governor was arguing with the members of the legislature, asking them to accept Exhibit J, isn't that a fact?

MR. FELIX: Objected to as argumentative.

A He explained that he had submitted that, and as a matter of fact it was submitted before this conference.

The fact that it was submitted meant that it was with his favorable recommendation.

Q But how long after Exhibit J was submitted by the Governor to the Legislature did this conference take place?

A I can not answer. I do not remember just how long a time did pass.

Q And in that conference, the proposed amendment, Exhibit J, was not definitely rejected?

A I don't remember.

At this point the hearing was suspended, (it being understood that Mr. Trinidad would be recalled at a later hearing for further examination) until November 13, 1923. at 3:00 p. m.

SESSION OF NOVEMBER 13, 1923.

The above entitled cause came on for a continuation of the hearings on this 13th day of November, 1923, and the following proceedings were had, to wit:

The same appearances were noted as at the previous hearings.

T. W. Parkin acted as reporter (English).

VICENTE FABELLA, 32 years of age, single, public accountant, residence 204 Roxas Building, Manila, a witness on behalf of the respodents, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. FELIX:

Q Mr. Fabella, you are a public accountant, duly licensed?

A Yes, sir.

Q What degrees (titulos) have you as a public accountant?

A Certified Public Accountant by the State of Wisconsin, and by the Examining Board of the Philippine Islands.

MR. FELIX: First I wish to have it appear of record that the testimony of this witness is completely immaterial in the case at bar, but this witness is presented with the object of overcoming certain attempts at proof presented by the petitioners. The presentation of this witness is not meant to show that this representation renounces its objections presented at that time.

MR. GIBBS: In view of the admission made by counsel for the respondents in advance that the testimony of the witness about to be adduced is wholly immaterial, we object to its introduction for that reason.

MR. FELIX: In that case the evidence presented by the petitioners along the same lines as this witness is about to testify would also have to be stricken.

MR. GIBBS: To which statement we do not conform.

Q What relationship do you have to the Jose Rizal College?

A I am the dean of that college.

Q Since when?

A For quite a long while.

Q Do you remember when that school was established?

A About four years ago.

Q Have you been associated with it since its inception?

A Yes, sir, I was the founder.

Q Do you know if that school has been recognized by the government?

A It is recognized by the government and authorized to issue the degrees of Bachelor of Science and Commerce.

Q Do you know if this college is recognized by any other universities?

A Yes sir, the courses of this school are also recognized by the various universities in the United States, such as Harvard, Michigan, New York University, Northwestern University, Boston, Ohio, and others.

Q Aside from your position as dean of that college, do you hold any other position in that college?

A Yes, sir, at present I am teaching accounting courses.

Q Do you know if in that Jose Rizal College, of which you are the dean, bookkeeping is taught?

A Yes, sir, we teach bookkeeping.

Q Do you know, Mr. Fabella, how the sari-sari tienda business is carried on?

A Yes, sir.

Q Please explain?

A These establishments purchase merchandise in amounts relatively small, to be sold at retail. Ordinarily they are found on the corners of the streets.

Q What kind of merchandise do these tiendas usually purchase?

A Merchandise of ordinary use.

Q Have you read Act 2972?

A Yes sir.

Q Should the provisions of Act 2972 be put into effect, should the sari-sari tiendas and other stores of the same quality, require the aid of a bookkeeper?

MR. GIBBS: Objected to as calling for a conclusion of the witness, which, if he responds in the

affirmative to the question, would be contrary to the provisions of the law itself.

MR. FELIX: The law itself is the best evidence of that.

A Act 2972 does not require that books shall be kept, but the Internal Revenue regulations require that a book of purchases and sales shall be kept, and to keep that a bookkeeper is not required.

Q Supposing that an establishment should have or should keep the books of account which are ordinarily used in business, and supposing that such books are kept in Chinese, do you believe that it would cause a great disturbance in the business of such establishments by obliging the owner to carry out the provisions of Act 2972?

MR. GIBBS: Objected to as incompetent, no sufficient basis having been established on which to base his opinion.

A No, sir. There must be somebody who keeps who can keep them in any language that the law requires, and in case that he does not possess such language, it would be sufficient to utilize the services of a clerk who does not necessarily have to be a bookkeeper.

Q Do you know how many persons have studied and passed in the José Rizal College, of which you are the dean?

A Yes, sir, about one thousand students during its existence.

Q These four years?

A Yes, sir.

Q How long a time is required to learn bookkeeping?

A According to our courses, it includes 17 lessons, which

ordinarily are finished in a scholastic semester of four months, and the summer courses are reduced to six weeks.

Q Could a person finish a course in bookkeeping in a single summer course of six weeks?

A Yes, sir. This summer course is not only given in our college, but in the University of the Philippines.

Q Have you taught there?

A Yes, sir, taught there for some time.

Q Could a person who has studied and passed the course of study in bookkeeping in your college, immediately after having finished his course of study take charge of the books of account of a commercial establishment such as the tiendas on Calle Rosario?

A Yes, sir.

CROSS EXAMINATION BY

MR. GIBBS:

Q You say that this Jose Rizal College has been recognized by a number of universities of the United States which you have mentioned. Will you state in what manner that recognition has been manifested?

A Yes, sir. The recognition to which I referred is by way of letters addressed to us, and appearing in our files from said universities, and the recognition consists in that should any of our students having finished any subjects in our college, these subjects would be credited in any of these universities, and should these students have received our degrees, these would be accepted for following courses in the said universities.

Q Have you such letters which you can produce from all of the colleges mentioned by you?

A Yes, sir.

Q Do these letters recognize, among other courses, a six weeks' course in bookkeeping?

A Yes, sir. The course of bookkeeping as well as other courses which are given during the summer are given daily instead of being given once a week as in the regular courses.

Q And each one of these universities which you have mentioned has expressly recognized this bookkeeping course of six weeks of the Jose Rizal College?

A These universities, according to the experience we have had, students who have gone out of our college and have gone there, have been credited for all the courses which these students have followed in our college not only in the bookkeeping course given in summer, but also other courses taught during the other seasons.

Q But you have not yet answered my question. Please answer the question. Each one of these universities which you have mentioned has expressly recognized this bookkeeping course of six weeks of the Jose Rizal College? I refer to the letters which you have in your possession and which you can produce here.

MR. FELIX: I believe the question is already answered.

A I say the same, that the question is answered.

Q Confining myself to the letters which you state you have in your possession, I ask that they be produced here.

A I believe that the letters themselves will answer that.

Q When can you bring these letters here?

A At any hour. Right now if you give me time, I can go and get them. These letters are in the files of the college, and the director of the college can present

them, because they won't change their contents regardless of who presents them.

Q When can you present these letters to which you have alluded?

A If you give me time I can go to the college right now and get them.

Q Can you bring them at tomorrow's session?

MR. FELIX: I would like to have it appear that this witness is leaving tomorrow for the United States, and for that reason it is impossible for him to bring them tomorrow, but we offer to present these letters by the director of the school.

MR. GIBBS: With the agreement that the letters will be exhibited, I withdraw the request that this witness produce them tomorrow.

Q In the commercial course which is taught in the Jose Rizal College, do you recognize bookkeeping and accounting as two distinct courses?

A Yes, sir.

Q What subjects are taught under the head of accounting, as distinguished from bookeeping?

A The subjects are bookkeeping and accounting. That is the designation that we give to these courses.

Q What is the distinction between accounting as you teach it in the Jose Rizal College, and bookkeeping?

A In so far as the subject matter is concerned?

Q Yes.

A That is a thing which is difficult to express in a few words, as it covers practically the entire curriculum of the college, but I will give a resume of the distinction between bookkeeping and accounting. In the bookkeping course we teach the elements, debits and

credits, books of account and their uses, elements of the classification of accounts, method of taking a trial balance, preparation of simple balances. The accountant course repeats almost the same principles of bookkeeping, but further into detail and makes the distinctions which are generally required of one who is a public accountant. There are various points which I can not mention at this moment. However, in the preparation of the balance, in the accounting course, a more minute study of the items of the balance sheet and other financial statements is made. As business enterprises of different kinds, the courses make allowances therefor, and the students are so taught as to the installation of systems and the audit of these accounts.

Q How long is the regular course of the Jose Rizal College in bookkeeping and accounting?

A If a student takes all of the courses in bookkeeping and accounting he might not finish it in three years, because we offer many courses in accounting, but for general purposes he can have the fundamentals of a public accountant in less than two years or three years, depending upon the number of accounting subjects that a student takes during his course.

Q What part of the maximum studies of the three years' course are crowded into the summer course of six weeks?

A Two subjects only.

Q What are they?

A That is optional on the part of the student. We don't have a prescribed course in that institution. The courses are elective on the part of the students. Con-

sequently we can not say specifically what courses during the summer a student should take, as we have the elective system in our curriculum.

Q He can either begin at the end or at the beginning, as sees fit, can he, under the Jose Rizal College summer course?

A If that is the case, that is the first university or institution which does it in that way. It is not done in that way in that collge. I want to explain so as to avoid further questions on your part. In the courses of the Jose Rizal College, aside from the bookkeeping course, there are other courses, such as management, business organization, business law, commerce and trade, and all of these courses have their elemental and advanced courses. So when I say that a student is at liberty to select, I mean to say that he cannot take a course without taking the pre-requisite courses. Each subject in the advanced course has its pre-requisite course, and this must be completed by the student. Therefore a student can not take advanced courses without having completed the pre-requisite courses, and as there are many courses he can select.

Q Let us return now to the original question and see whether you wish to rectify your answer. My questions, Mr. Fabella, have referred throughout and have been limited to the subject of bookkeeping and accounting, and I ask you again what particular courses of bookkeeping and accounting are given in the six weeks course?

A We have only one course in bookkeeping, and after that a student can then begin his courses in accounting.

Q But I wish to limit my question to the six weeks' course. If I understand you correctly, that is limited to bookkeeping and does not include accounting?

A Yes, it does not.

Q The thousand students you referred to as having studied bookkeeping and accounting in the Jose Rizal College during the last four years, were they all graduates?

A No, I didn't say bookkeeping and accounting. I said bookkeeping. They have studied bookkeeping.

Q So what you mean to say is that during the last four years one thousand students of the Jose Rizal College have studied bookkeeping?

A Have studied and passed the course in bookkeeping.

Q Did each of these students obtain diplomas?

A No, we don't grant diplomas after the completion of the bookkeeping course alone.

Q Why not?

A That is not our practice.

Q In order to obtain a diploma, it is necessary for them to take how long a course?

A The course that has been approved by the Department of Public Instruction consisting of one hundred and twenty four units of study.

Q Can that be crowded into the six weeks' course?

A All of it?

Q Yes.

A I should say not.

Q What is the period of time devoted to those 124 units in the Jose Rizal College?

A That depends on the kind of student. If the student is a "working" student, that is one who works during

the day, he isn't allowed to take as many subjects or as many points as a student who does not work, but simply devoted his time to study.

Q Well, what are the minimum and maximum periods devoted to the study of the one hundred and twenty four units required by the Jose Rizal College?

A I would rather give the average than the maximum or minimum. The average is from three to four years, but I wish to say in this connection that not all of these one hundred and twenty four units are accounting and bookkeeping. They embody other courses in commerce, such as business law, organization, finance, management, English, and foreign languages, and other subjects which are usually taught in universities in connection with a course of this type.

Q In what language is the course of bookkeeping and accounting taught in the Jose Rizal College?

A English.

Q In English only?

A Yes, sir, in English only.

Q What educational qualifications are required of a student of bookkeeping and accounting previous to entering the study of the course in the Jose Rizal College?

A If a student desires to study bookkeeping alone, as a great many of our students do, we simply require them to have an intermediate certificate or the equivalent, but if he wants to take the full course, which is not bookkeeping and accounting only, we require high school certificates to be entitled to the degree.

Q So that only high school graduates are eligible to obtain the diploma of the Jose Rizal College of bookkeeping and accounting?

A We don't give diplomas in bookkeeping and accounting, as I mentioned before, but those high school graduates which complete the one hundred and twenty four units required by the Department of Public Instruction are given the degree. Those who are not high school graduates, but have business experience are not given given a degree but a diploma in commerce. However, we have many students in the institution who take special subjects, such as bookkeeping and accounting only, and these students are not given degrees or diplomas, because they have not taken the other courses.

Q Are they given certificates of graduation in these subjects?

A We don't give them any certificates of graduation, but we give them a letter or rather a transcript of the record of what they have taken in the institution.

Q Do you mean to say that a high school graduate upon completing the course of bookkeeping and accounting can obtain no diploma unless he takes with them other courses?

A Yes, because that is the requirement of the Department of Public Instruction.

Q During that period of time, that is to say, the four years, how many of the students of the José Rizal College have completed the bookkeeping and accounting courses?

A The bookkeeping course, as I mentioned before, about one thousand have taken the course and passed, but those taking advanced courses in accounting, that is to say, those who continue after the bookkeeping and take accounting, I can not tell at present.

Q They are very, very few, aren't they?

A No, not very few.

Q How many of them are recognized licensed accountants? How many licensed accountants, with equal degrees to your own, have been produced in the José Rizal College?

A At least of the young men now practicing public acounting, the majority of them are from the José Rizal College.

MR. FELIX: I wish it to apear of record that the law creating the board of examiners for public accountants has been approved only this year.

A (Continued) I have been informed by the Board of Examiners that those who have been exempted from examination are products of our institution. At the last examination we had a larger number of candidates than any other similar institution.

Q How many have you presented?

A Thirteen.

Q And how many of them passed?

A The examinations are still being held, today and tomorrow.

Q What is the total number of licensed accountants like yourself in the Philippine Islands, Mr. Fabella?

MR. FELIX: Objected to as completely immaterial. As I stated before, the law creating the board of examiners for public accountants has been recently passed.

A I don't know exactly, because the board of examiners passes upon that, but to be qualified by this board, one who has been a bookkeeper is not qualified for examination. He must have followed the profession of

public accountant which is different from a bookkeeper.

Q Have you kept track of the thousand students who studied bookkeeping in the Jose Rizal College since they left the college, to any extent?

A I don't know really how many of them we have complete records of. We usually request them to give us information as to their whereabouts, and what they are doing, but like other institutions, not all of them give us the information we desire.

Q As far as your know, are practically all of them employed?

A I don't want to venture any statement on that. I don't know how they are fixed.

Q Well, you have been turning out these students with the idea that their services were needed in the country, haven't you?

A Yes, and also because they applied for the course.

Q And so far as your experience teaches you, there has been at all times quite a strong demand in the Philippine Islands for bookkeepers, hasn't there?

A Not recently. I wish to say that my experience, not only in the college, but in the office, I have many applications for positions either as bookkeeper or as accountant, but I can not supply them with what they desire.

Q Business for the Filipino bookkeepers is running low now, and they would like to keep books for the Chinese merchants, is that it?

MR. FELIX: Objected to as completely immaterial and impertinent, and further more the witness is not able to testify as to what may animate the bookkeepers and accountants who apply to him for work.

MR. GIBBS: Due to the statement of the prosecuting attorney that in addition to being immaterial all of the testimony of this witness, that the witness is also incompetent, I ask that the testimony of the witness in chief be stricken for this further reason.

MR. FELIX: It appears that my opponent has not understood my objection. My objection is on the ground that he is not qualified to testify in the name of others, who should be called to testify as to the points to which the question refers.

Q So fas as you know, are any of these one thousand Jose Rizal College students of bookkeeping employed by any Chinese merchants?

MR. FELIX: Objected to as immaterial.

A Yes, I think we have, as we have a number of Chinese students in our college.

MR. FELIX: I withdraw my objection.

Q How many of the thousand students mentioned by you, if you remember, were Chinese?

A I don't have that data on hand. I didn't want to venture any estimate now. But one thing I know is that we have had Chinese students coming direct from China to study in our institution, and with their degrees obtained in China, and not here in the Philippines.

Q Can you state approximately how many of the thousand students were those who took the six weeks summer course?

A I think about two hundred. I am not sure.

Q And you are unable to state whether half of three quarters or four fifths of these students are now employed?

A Not at present I can not state. I don't know exactly or even approximately what their status is.

Q You don't know what became of them?

A Well, I could get that from the records, but I cannot produce it as statistical information. I could get the record of each student and trace him up to the point where we have information, but I can not give now a conclusion as to the thousand. That will have to be the subject of a statistical compilation.

Q Have you experted any books which were kept by any of these thousand Jose Rizal College bookkeepers?

A I think so, but very few only. Only a few of them, not many.

Q That is your business, ins't it, experting books of accounts of merchants?

A Yes.

Q And you have one of the largest businesses of that sort of any Filipino accountant in the islands, haven't you?

A I don't know about that. I don't know what the others are doing, but at least in my examination of the books I have not come on all these thousand students, but only a few of them, because a great many of them don't depend upon the college for a job. In fact, the college does not guarantee the students a job; consequently we are under no obligation to our students to place them in the firms which we are auditing.

Q Can you name a single student, one of these thousand Jose Rizal students, whose bookkeeping has been experted by you in your capacity as an expert accountant?

A Well, I have taught one student which I particularly

remember at this moment. During a course of six weeks, I think it was in the University of the Philippines, where I taught the same course I am teaching in the Jose Rizal College, and after the course he was made assistant bookkeeper of one of largest companies, Filipino concerns.

Q What company?

A Compañia Mercantil de Filipinas, and in less than two months he was made bookkeeper, and all of his foundation has been based on the course I have given him, as when he entered that he didn't know anything about bookkeeping. That is one instance that I remember very well, because the man is still with me.

Q But you can not remember any one of the thousand of the Jose Rizal College students?

A I could not-let me see if I can recall at this moment. Do you mean to say to give you a name or two?

Q Give the names of any that you can, and the places where they work.

A I might have, but I really don't remember the names. I don't usually know the students by name.

Q And if you don't know the names, you naturally don't know the places where they keep books?

A I remember now. Referring to your previous question regarding naming at least one student whose books have been examined by me. I remember now at this moment a student by the name of Rufino Melo, who took the bookkeeping course in the Jose Rizal College, and later on was found by me to be the chief accountant of the National Coal Company. The system of books of that company is quite complicated.

Q How many years after you taught him did you discover him engaged in this business of the National Coal Company?

A I think about two years more or less. I don't remember exactly now.

Q That is the only one of the thousand students whose books have been experted by you?

A I might be able to recall more, but what I don't want to venture to say now is this. A great many of these bookkeepers whose books I audit have studied their bookkeeping course in the School of Commerce, and not in our institution, although they may be taking other courses in our school, and as your question refers particularly to the bookkeeping course, I can not answer you definitely at this moment. Some of these bookkeepers whose books we are auditing are students in our institution on accounting or other subjects.

Q That is on your suggestion after you have experted their books, is it?

A No, we don't usually attract students. The students come to us. I wish to say in this connection that the fees of the Jose Rizal College are the highest of all other institutions of similar type in Manila, and in spite of that we have the largest enrollment.

Q Now, Mr. Fabella, let us get down to business, and state whether you consider these six weeks' students competent to take charge as chief bookkeeper, of the books of account of any merchant of any extensive business when they leave that institution, of any considerable business?

A Of course these six weeks' bookkeepers can not be chief

accountants of a bank or any big financial institution; in fact to be placed in that position one has got to work years, in the same manner that I think a lawyer can not be at once chief justice of a court after graduating from school. He has to get experience.

Q Isn't that true of every important bookkeeping position?

A Yes.

Q And whenever a merchant's business is of a considerable or important extent then the position of chief bookkeeper to that merchant is an important position of bookkeeping, isn't it?

Q And to be qualified for an important position of bookkeeping, many years of experience in subordinate positions are necessary, are they not?

A As a rule, yes, although as I said before I know of a case where I taught a student a six weeks' course, and two or three months after completing the course he was made chief bookkeeper, supplanting bookkeepers who had six or eight years' experience in that firm.

Q And for that reason you were greatly surprised, were you not?

A At least I admired the course I gave.

Q That was a most extraordinary case, was it not, so far as your experience has gone?

A Well, that is rather extraordinary, that particular one.

Q Another serious question, Mr. Fabella, isn't true that the business of every merchant, with the exception, possibly, of those so called sari-sari merchants, is important, so far as bookkeeping is concerned?

A I don't quite understand your question.

Q What are the three requisites of success in business, Mr. Fabella, the three most important essentials of success in commercial business. In order to abbreviate the subject, is it not a fact that the bookkeeping of any business is one of the three essentials of success?

A Yes, that is true, but it is a pity, really, that a great many of them do not pay attention to that end.

Q You are not a lawyer, are you, Mr. Fabella?

A I don't pretend to be.

Q And as Act 2972 impresses you as a business man, it doesn't require any books of account at all to be kept, does it?

MR. FELIX: That is a legal point, to be discussed at the proper time. I object to the question on that ground.

MR. GIBBS: You proved that fact by this witness yourself on direct examination.

MR. FELIX: What I desire to have appear in the record is that—if counsel for the opposition will agree —both of us agree that Act 2972 does not require books to be kept in any language, but that should they be kept they must be kept in English, Spanish, or other language. Are you willing to have it appear of record that we agree on that point?

MR. GIBBS: It is my contention now and has been at all times that Act 2972 does not require any books of account whatever to be kept, and for that reason it is an unlawful encroachment upon the liberties of the people. As to the last statement of the fiscal, as to whether or not it requires that books be kept in any of those three languages in the event that books

are kept, I am not in agreement with the statement of the fiscal. Act 2972, according to my opinion, is limited to converting into crime the keeping of books in any language, that is in English, Spanish, or any local dialect.

A Yes, the law does not require that any books of account be kept.

Q And the only guide you have, as a business man, with reference to what books of account must be kept, are the administrative orders of the respondent, the Collector of Internal Revenue.

A No. The business man can keep any books that he thinks advisable, but he must keep those two books that are prescribed by the Bureau of Internal Revenue.

Q That is what I asked you, Mr. Fabella. The only guide you have as to the books you MUST keep are the administrative orders of the Collector of Internal Revenue?

A At least when I install systems I don't take these two books only as a guide. I put in more books than that.

Q But we are speaking now of the obligation that a merchant has to keep books.

A That depends on the point of view of the merchant. If the merchant desires to comply with the requirements of the Internal Revenue, therefore he would only keep a book of purchases and sales, as prescribed by the law, but if he wants to keep books for his own information, he has to put in other books.

Q Are the books required by the Collector of Internal Revenue sufficient to enable a merchant to thoroughly understand and check up his business?

A That depends upon the extent and nature of the business. A single proprietorship, conducting a moderate sized business, usually disregard the books according to my experience, but knows what is happening in his business regardless of the books, as he is personally in touch with the transactions as well as the files and merchandise he has on hand.

Q Have you ever experted the books of any Chinese merchant?

A Yes. Not actually experted, but I was engaged in connection with an investigation. If I remember right without mentioning any names, which I can not very well do on account of my professional ethics, the case deals with a partner who decided to withdraw from a partnership, and I was engaged by the partnership to prove to the retiring partner that the amount that is being allowed to him is correct, and just, and in accordance with the books. I started the work, but on coming to the profit and loss statement in its relation to the capital, they didn't agree, and when I asked for details of the profit and loss statement, the manager of the firm, being unable to give me the details, sent word to me to withdraw and leave the engagement alone, and to present my account.

Q Were these books kept in the Chinese language?

A Yes, sir, by a big Chinese firm.

Q And do you wish, as an expert accountant, from that experience of yours, to convey to the court the idea that Chinese bookkeepers and accountants as a rule do not keep correct books of account, and that their books do not show a correct statement of profits and losses?

A In this particular case I have in mind I was warned by the retiring partner that the set of books which are being shown to me are the set of books for the government, and not the real set, and perhaps that is the reason why the profit and loss statement and the capital account didn't tally. The profit and loss and the capital should have tallied up in any well regulated accounting system.

Q Is that the only case in which you examined the books of a Chinese merchant?

A Well, I have examined others.

Q Now, inasmuch as you reserved this little surprise to spring on us with reference to a dishonest Chinese merchant, will you please give us his name?

MR. FELIX: I ask that the Clerk inform the witness that he is not obliged to give the name. As a witness he may keep silence.

MR. GIBBS: I wish to make this statement, that in view of the fact that I put on question to the witness to which any such aspersion against any Chinese merchants was or is responsive, I therefore demand of the witness, as an honest citizen, to either retract his statement or give the name of the Chinese merchant, in order that we may have the opportunity to impeach the witness.

MR. FELIX: I wish to have it appear that the clerk inform the witness that it is up to him to name or not the man or the firm whose books he examined, but that it is not obligatory upon him to give it, if it should be against his professional ethics.

MR. GIBBS: I wish to have it appear that the revelation of the name of the merchant can not in

any way be such a tremendous infraction of his professional ethics as the statement which he has made without such revelation, and I repeat my demand.

A I think that I should not answer that question, because it is against the rules of professional ethics, and it might cause me much trouble.

Q What you want to say is that a general insult to the Chinese merchants is not an infraction of professional ethics?

MR. FELIX: Object to the question, because it draws a deduction which is not justified by the answer of the witness.

A I did not say such a thing. I have not insulted the Chinese.

Q What question or part of a question have I asked you which you think this insult against the Chinese is responsive to?

MR. FELIX: Objected to as the question is not a logical deduction from the statement made by the witness. Furthermore, it appears from the testimony of the witness what the question was which gave rise to this statement, so that by consulting the records it can be easily determined.

A The records will show that.

Q But you don't remember now what question I put to you to which you answered that the Chinese whose books you examined gave you to understand that he had a set of books for the government and another for his own account?

MR. FELIX: Objected to as immaterial. The record itself would be the best evidence.

A The record will show.

Q Do you know anything about how extensive the business of the tienda keepers on Calle Rosario is?

A Yes, sir, I have an idea of their business from the nature of their accounts with wholesalers whose books I audit.

Q Don't you know that nearly all of those Chinese merchants on Calle Rosario are wholesale merchants and do an extensive business in the provinces, in addition to their retail business on Calle Rosario?

A Yes sir, I know that.

Q And do you mean to say that in your opinion as an expert accountant, any one of these thousand students turned out by the Jose Rizal College would be competent to take charge of the books of account of any one of those Calle Rosario tienda keepers, do you?

A I think they are competent.

Q That is your opinion, that any one of those thousand students of Jose Rizal College would be competent to take charge as chief bookkeeper of any one of those wholesale tienda keepers on Calle Rosario.

A Yes, sir.

Q If you had in charge the enforcement of Act 2972 against a Chinese merchant who employed no one but Chinese clerks, and who was unable himself to read or write any of the languages mentioned in Act 2972, and none of whose clerks were able to read or write any of these languages, how would you go about enforcing it?

MR. FELIX: Objected to as based on a supposition which is not proved by the record, which is that the Chinese are obliged to employ only Chinese who do not know the other languages.

A Such an establishment that had no one who speaks any of the languages mentioned by the law is very rare, because how could he carry on business?

Q I am putting a hypothetical question to you as a supposed expert, and I wish you to answer the hypothetical question as put to you. Assuming that you have in your hands the enforcement of Act 2972 against a Chinese merchant, who is unable to read or write any language other than Chinese, who employs only Chinese clerks, who are unable to read or write any language other than Chinese, how would you go about enforcing the act?

MR. FELIX: Objected to as treating of a hypothetical question which is without foundation.

MR. GIBBS: I wish to have it appear of record that the witness is taking a long time to study this question.

A I have to study it carefully; it is just like a question in an examination. I don't know really how I would go about enforcing the act, because the supposition is something that I don't believe will exist.

Q I haven't asked you about that, sir. I haven't put any question to you about your opinion on whether or not the condition embraced in this hypothetical question exists or not.

A And this hypothetical question is hard to answer because it is just like asking a question as to whether the moon and the sun should collide, what will happen. I can not answer that.

Q Take another hypothetical question. Suppose that a Chinese merchant is running his establishment alone, and is unable to read or write any language other

than Chinese. How would you enforce Act 2972 against him?

MR. FELIX: The same objection.

A The Chinese merchant in the first place can not do business, because he can not understand the people with whom he is doing business.

Q Have you understood any of my questions, or are you just answering haphazard, without listening to the questions.

A I answered the questions as I understood them.

Q The question I am putting to you is in the event that a merchant is unable to read or write any language other than the Chinese. How would you go about enforcing Act 2972?

A If he does not keep books there will be nothing to enforce against him, because Act 2972 does not require a merchant to keep books.

Q But don't the administrative orders of the Collector of Internal Revenue require all Chinese merchants to keep books?

A Yes, sales book and purchase book only, and those who cannot keep them themselves, they must make use of clerks who can read.

Q Your idea of enforcing Act 2972 would be to deliver over the Chinamen's business to a Filipino bookkeeper, isn't that it, if he is unable to keep his books in any of the languages designated in Act 2972?

MR. FELIX: Objected to as based on a premise not set up in the record, because it is based on the supposition that there are no Chinamen in the Philippines who know the languages or dialects of the Philippines. That has not been proved in the record.

A Not necessarily. He might employ a Chinese bookkeeper if he knows how to read or write any of the languages or dialects specified in the Act.

Q How many unemployed Chinese bookkeepers are there in the Philippine Islands, to your knowledge, who are able to read or write Chinese and any of the other languages mentioned in Act 2972?

MR. FELIX: Objected to on the ground that the question goes outside of the direct examination. Furthermore, this witness is incompetent to testify regarding that point. The question lacks foundation.

A I don't know.

Q Do any of the thousand students of bookkeepers to whom you referred as having attended the Jose Rizal College, with the exception of possibly a few Chinese, read or write the Chinese language?

A I don't know.

Q If you were enforcing Act 2972, how would you go about having one of these thousand Jose Rizal College bookkeeping students keep the books of a Chinese merchant who was unable to read or write any other language than Chinese?

A Have the transactions translated.

Q So that in order that the Chinese merchant might be be able to understand and check up his own books kept by a Filipino bookkeeper who was unable to read or write or speak Chinese, it will be necessary for the Chinese merchant to also employ an interpreter or translator?

A Yes, if there is no man in the firm.

Q And in order that the Chinese merchant could correctly check up his books it would be necessary to have

them translated into a duplicate set of books in Chinese, wouldn't it?

A Do you mean to say to keep two sets of books?

Q Yes, that is what I mean.

A In that case I think that the logical thing to do would be to make the entries in Chinese, so that they shall be translated later into a language provided by Act 2972.

Q Therefore, in every business house of the kind mentioned by me, it would be necessary to employ not only a Filipino bookkeper but also a Chinese bookkeeper and an interpreter to translate what is kept in Chinese to the book kept in one of the languages mentioned in Act 2792?

A If the one who keeps the books in Chinese is a bookkeeper, the one who puts it into the other language it is not necessary that he should be a bookkeeper, because the theory of bookkeeping is the same regardless of the language in which the books are kept.

Q Do you mean to say that a set of books kept in Chinese and translated literally into any of the languages mentioned in Act 2972 would serve as a good set of books in any of those languages?

A Yes, sir, I think so.

Q To arrive at this conclusion, it is necessary to depart from the basis that the books kept in Chinese are scientifically correct?

A Yes, sir.

Q And your experience as a bookkeeper is to the effect that the books kept by the Chinese merchants are kept scientifically?

A Yes, on a fundamental basis of bookkeeping.

Q Are you in agreement with the other experts on accounting who have testified here that in order to be successful in any business it is necessary that a merchant be fully aware of the contents of his books of account?

MR. FELIX: Objected to as the witness has already answered that.

A Yes, I am in agreement, but as I said before it is rare that a merchant is aware of his books, or goes to his books for information.

Q You are now referring to Chinese bookkepers or to Filipino bookkeepers?

A In general, because the same complaint is made by American accountants regarding American firms.

Q How many Chinese clients have you?

MR. FELIX: Objected to as immaterial.

A Not very many.

Q Do you mean that the general answer given by you before refers to these Chinese clients of yours?

A What is the general answer to which you refer?

Q Do you mean to say that these Chinese clients of yours pay little attention to bookkeeping in the carrying on of their business?

A No. In the general answer I gave I desire to explain that when my clients call me in, as a rule they allege that they don't know anything about what is contained in their books and that is the reason they call us, but after we have straightened the books and given a report as to what they contain, then they pay more attention about their books.

Q You mean to say that you have a number of Chinese

merchant clients who regularly have their books revised and experted by you as an expert accountant?

A Well, I don't want to say that they are regular, because a client sometimes calls you for an audit because they are required by the bank, and as a great many of them don't regularly come, especially Chinese, they generally come to us once and seldom come back.

Q Do you expert books of Chinese merchants which are kept in Chinese?

A Yes, sir.

Q Do you employ a Chinese accountant for that purpose?

A No; as a rule the bookkeeper himself translates to me what is contained in these books.

Q And as a rule it is the bookkeeper with whom you have your transactions with reference to the books?

A Yes, sir.

Q And he is the man who employs you to do the work?

A No, I am employed by the manager or by the board of directors, or whoever has the authority, but my dealings in connection with the audit is with the bookkeeper who keeps the books.

Q And the Chinese bookkeeper always tells you that he doesn't know anything about his books?

A No, the bookkeeper knows but seldom the owner does, because the owner is not always the bookkeeper.

Q Will you give me the name of a single Chinese bookkeeper who has told you he did not know the contents of his books, or didn't know them previous to the time that he turned them over to you?

A I did not say the bookkeepers do not know. I said the owners, not the bookkeepers.

Q Will you give me the name of a single owner of a Chinese commercial business who previous to turning

his books over to you for audit has stated to you that he knew nothing about the contents of his books?

A I don't recall of any Chinese client of that type, but Filipino clients, yes.

Q So that your experience in regard to merchants who are ignorant of the contents of their books of account is limited to Filipino merchants?

A Yes, in so far as their open declarations to me is concerned. The others may not have known what was in their books, but they have not so expressed to me.

Q Now, in how many instances have you experted books of Chinese merchants kept in the Chinese language?

A Very few instances; as I said, I have a limited number of clients.

Q Well, one, two, or three?

A It is very hard. I don't remember the names of my clients. I cannot recall them all at once, but at least more than three or four, and maybe even a dozen. I have got to look over my books to answer that definitely.

Q But you can not remember the name of a single one of those merchants?

A Yes, I can remember the name of at least one.

Q Who is it?

A I don't believe I have to tell the name of the merchant.

MR. FELIX: It is completely immaterial.

Q Now, in each of these instances where you experted the Chinese books of account, how did you ascertain their contents, not being able to read or write the Chinese language yourself?

MR. FELIX: The question is already answered.

A Through the interpreter, who is, as a rule, the bookkeeper himself.

Q In what language was the interpretation carried on?

A Either English or Spanish.

Q And without the interpretation you were absolutely helpless so far as your ability to learn the contents of the books, were you not?

MR. FELIX: The answer is involved in the question, the witness not speaking Chinese.

A Yes, sir, I was helpless but at the same time the vouchers supporting the transaction are usually in English or Spanish.

Q You were in the same position so far as the contents of these books were concerned as if you yourself had been a merchant obliged to keep your books in the Chinese language, were you not?

MR. FELIX: Objected to as immaterial.

A Yes, sir.

Q As an expert accountant and as a business man, do you believe that if you, as a Filipino merchant, were required to keep your books in the Chinese language, that you could successfully conduct an important business that way?

MR. FELIX: Objected to as completely immaterial to the case at bar. The witness is incapacitated to answer as to the situation in which such a merchant would be.

A Naturally I would keep a set which I understood in addition to the set I was obliged to carry.

RE-DIRECT EXAMINATION BY

MR. FELIX:

Q Where is the Jose Rizal College?

A Calle R. Hidalgo, No. 1063.

Q Do you know if the universities of the United States which have recognized the Jose Rizal College have also summer schools?

A Yes, sir, some of them have.

Witness excused.

At this point the hearing of the above entitled cause was suspended until November 14, 1923, at 3:00 p. m.

SESSION OF NOVEMBER 14, 1923.

The above entitled cause came on for a continuation of the hearing on this 14th day of November, 1923, at 3:00 o'clock p. m., and the following proceedings therein were had, to wit:

The same appearances were had as at the previous hearing.

T. W. Parkin acted as reporter (English).

BENITO LEUTERIO, 43 years of age, married, clerk, Bureau of Education, residing at 850 Calle Aguilar, Trozo, Manila, a witness on behalf of the respondents, after having been duly sworn, testified as follows:

DIRECT EXAMINATION BY

MR. FELIX:

MR. FELIX: I wish to state that I present this witness to refute or weaken some statements made by some witnesses for the petitioners; which statements this representation believes are completely immaterial, and impertinent to the case at bar, and this witness is presented to testify regarding similar circumstances in the event that the Honorable Supreme Court desires to consider them. This attitude of this

representation does not in any way mean that we renounce our previous objections.

MR. GIBBS: In answer to the speech of the fiscal, I will state that manifestly the fiscal has not sufficient confidence in his theory to trust in it.

MR. FELIX: It would appear that the understanding of the attorney for the petitioners is not correct.

Q What position do you hold in the Bureau of Education?

A Chief of the statistical division.

Q As such chief of the statistical division, what are your duties?

A I am making summary of attendance of all public school pupils every month.

Q Showing you these documents which for identification I have had marked as Exhibits 6-A, 6-B, and 6-C, and I ask you if you recognize these documents.

A Yes, sir, this is the signature of Dr. Bewley, Director of Education.

Q Who prepared this memorandum, Exhibit 6-B?

A I did.

Q Where did you get the data appearing in the document?

A We took this from the records of our office.

Q Official records?

A Official records.

Q In this number of graduates of intermediate schools and high schools, as well as the Philippine School of Commerce, are the graduates of private schools included?

A No, sir.

Q In this document, Exhibit 6-B, is there included graduates of the Shool of Commerce and bookkeeping courses in the University of the Philippines?

A No, sir.

Q Referring to Exhibit 6-C, I ask you if these subjects which appear in No. 3 of this indorsement indicate the arithmetical grade which is required to be made in the high schools and intermediate schools in the Philippines?

A This is the course of study prescribed by the Bureau of Education.

Q Do you know if those who have graduated in the public high schools and intermediate schools of the Government of the Philippine Islands have passed the arithmetical grade set forth in this document?

MR. GIBBS: Objected to as there is no foundation laid for its admission. The witness has not shown his knowledge or competency to testify on any other subject then merely with reference to the statistics of the schools.

A Yes, sir.

CROSS EXAMINATION BY

MR. GIBBS:

Q You are a mere clerk of statistics of the Bureau of Education, are you?

A Yes.

Q And you have no personal knowledge whatever of any of the statistics contained in any of these exhibits other than that you obtained them from the records?

A We got that statistics from our records.

Q And that is all you know about it; it appears in the records?

A I know about that statistics because I prepared them.

Q But you haven't personal knowledge of the facts?

A I know about the statistics.

Q You know that these statistics appear in the records of the Bureau of Education, and that's all you know [illegible]?

A Yes.

Q During what period of time were these three hundred and twenty five graduates of two years in the bookkeeping course produced?

A I don't understand very well your question.

Q How long has this School of Commerce been running? How many years?

A Well, from 1906 to 1907, that's all.

Q You mean that this Philippine School of Commerce was conducted only during the years 1906 and 1907?

A No, I mean the number of graduates at that time, but the School of Commerce was established before that time, I don't know exactly what year.

Q Is the School of Commerce still being conducted in Manila?

A Yes, sir.

Q And during the entire period of its existence it has produced the results shown in Exhibit 6-B?

A Yes.

Q Do you mean by this statement that the three hundred and twenty five boys and girls graduated?

A Yes.

Q In the bookkeeping course?

A In the bookkeeping course.

Q By graduating you mean they took the two years in bookkeeping?

A Yes.

Q Do you know how many of the 325 graduated in the year 1922?

A I have a record here also. You mean just in bookkeeping?

Q Yes. Give us the details by years of each of the three hundred and twenty five graduates of the two year bookkeeping course, which appeard in Exhibit 6-B.

A From 1906-1907 to 1911-12 the number of graduates in bookkeeping was, 23, boys and girls. 1912-1913, 15 males and one girls; 1913-1914, 26 boys and no girls. 1914-1915, 20 boys and one girl. 1915-1916, 28 boys and one girl. 1916-1917, 31 boys and two girls, 1917-1918, 38 boys and two girls, 1918-1919, 11 boys and one girl. 1919-1920 17 boys and 4 girls. 1920-1921, 29 boys and one girl, 1921-1922, 23 boys and two girls, and 1922-1923, 37 boys and three girls.

Q Do the statistics which you have brought here with you show how many of these three hundred and twenty five graduates of the bookkeeping course had a previous high school education?

A I do not understand your question.

Q Do your statistics show what other educational qualifications these bookkeeping graduates had at the time they graduated?

A Well, these were all graduates of the course of study prescribed by the Bureau of Education.

Q Do you know what their educational qualifications outside of bookkeeping were?

A No, I have not studied bookkeeping.

Q I am asking you if you know what educational qualifications these graduates of bookkeeping had?

A I do not know.

Q You are not a bookkeeper yourself?

A I am not.

Q You don't know any of these graduates of bookkeeping personally?

A No.

Q You don't know anything about the qualifications or ability of these graduates?

A I know that they were graduated by the course of study prescribed by the Bureau of Education.

Q All you know is what is shown on the records of the Bureau of Education; that's all you know, isn't is?

A Yes, sir.

Q You don't know how many of these graduates are employed or unemployed?

A No, because to know that we have to dig out from our records.

Q Do your records show how many of them are employed?

A I have to find out from the field first before we can do that, but that is our record showing the graduates.

RE-DIRECT EXAMINATION BY

MR. FELIX:

Q Are these statistics prepared by you?

A Yes sir, "segun", (Exact translation difficult. Rep.)

Q How are these statistics prepared in the Bureau of Education?

A What we do here in the office we usually get the number by each province that is, by divisions, and consolidate them.

RE-CROSS EXAMINATION BY

MR. GIBBS:

Q Does this School of Commerce have branches in the provinces?

A Yes.

A And these three hundred and twenty five bookkeeping graduates include all of the graduates produced by that school since the year 1906?

A Yes, sir.

Witness excused.

AMADO DEL ROSARIO, 26 years of age, single, Chief Examiner of the Bureau of Civil Service, residing at 52 Calle Magallanes, Manila, a witness on behalf of the respondents, after having been duly sworn, testified as foolows:

DIRECT EXAMINATION BY

MR. FELIX:

Q Showing you these documents which for identification are marked Exhibit 7-A, 7-B, and 7-C, I ask you if you recognize them.

A Exhibit 7-A is the letter of the chief clerk of the Bureau of Civil Service transmitting Exhibit 7-B and Exhibit 7-C to Mr. Alfonso Felix.

Q Whose signature "M. Gonzales" appears at the foot of that document?

A This signature is the signature of the chief clerk of the Bureau of Civil Service.

Q Do you know the signature of the chief clerk of the Bureau of Civil Service?

A Yes, sir, I do.

Q Who prepared this document, Exhibit 7-B?

A Exhibit 7-B was prepared by myself.

Q Whose signature is it appearing at the foot of that document?

A My own signature.

Q Who prepared Exhibit 7-C?

A Exhibit 7-C was prepared by the examining division of the Bureau of Civil Service.

Q Under whose direction?

A Under my supervision.

Q Whose signature is that "A. del Rosario" appearing at the foot of Exhibit 7-C?

A That is my signature.

Q Are the statistics appearing in this Exhibit 7-C correct?

A I have certified them as correct.

Q Do you know from where the statistics appearing in this Exhibit 7-C taken?

A These figures were compiled from the annual reports of the Director of Civil Service and other official documents we have in the Bureau.

Q Do you know if the arithmetical grades appearing in Exhibit 7-B are the grades which are required in the different examinations mentioned therein?

A Exhibit 7-B refers to the nature of the arithmetical tests given in the various examinations mentioned therein.

Q How long have you been in the Bureau of Civil Service?

A Since November, 1915.

Q What positions have you held in that Bureau?

A I began as clerk there, first grade clerk, then I was promoted to junior examiner, examiner, assistant chief examiner, and finally as chief examiner.

CROSS EXAMINATION BY

MR. GIBBS:

Q Referring to Exhibit 7-C, the only columns referring to bookkeeping are the columns under the title "Bookkeeper" and "Junior Bookkeeper", is that correct?

A Yes, these are the only bookkeeper examinations we give.

Q And the columns under the headings "First grade", "Second grade", and "Third grade" have no reference to bookkeeping?

A Well, they don't have any bookkeeping subjects. There is no subject called "Bookkeeping" in any of these examinations.

Q Then my statement is correct, that the columns under "First Grade", "Second Grade", and "Third Grade", have nothing to do with the subject of bookkeeping.

A Well, the examinations have nothing to do with bookkeeping.

Q Well, they haven't anything to do with bookkeeping at all?

A That is bookkeeping in the technical sense.

Q Are you a bookkeeper?

A Yes, sir, I am a graduate bookkeeper.

Q Are you a graduate accountant? Expert Accountant?

A No, sir.

Q Where did you take your course in bookkeeping?

MR. FELIX: Objected to as completely immaterial. This witness was not brought here for any other purpose than to identify Exhibits 7-A, 7-B, and 7-C.

A I completed the course given by the Cosmopolitan Business College.

Q What was the purpose of including these statistics un-

der the titles "First Grade", "Second Grade", and "Third Grade", in Exhibit 7-C?

MR. FELIX: Objected to as immaterial. The witness is not here to testify as to the intention that counsel for the respondents had in presenting the document.

A I don't know exactly. I prepared these figures under the instruction of the Director of Civil Service.

Q So far as you know, they do not include the subject of bookkeeping or accounting?

A That is, in each of these clerical examinations, that is, first grade, second grade, and third grade, there is no subject called bookkeeping or accounting.

Q So that the total number of bookkeepers passed by the Civil Service in the Philippines from the year 1901 to 1922 inclusive were one hundred and twenty eight bookkeepers, and two hundred and nine junior bookkeepers?

MR. FELIX: Objected to as the document is the best evidence.

A They so appear.

Q Is that according to the document?

A According to the document these figures are correct.

Q You testified that you were the chief examiner of the Bureau of Civil Service?

A Yes, sir.

Q Upon what subjects do you examine?

A I read many subjects.

Q Are bookkeeping and accounting among the subjects that you examine upon?

A Yes, sir. I prepare the questions for the bookkeeping examination.

Q And also for accounting?

A No, we don't hold any examinations for accountants.

Q Are most of these bookkeepers examined by the Civil Service Bureau now in the employ of the government?

A In my opinion, the majority of them must be in the government service, because the bookkeeper examination is promotional in character.

DIRECT EXAMINATION BY

MR. FELIX:

Q Those who have passed the examinations for first grade, second grade, and third grade must have made the mathematical grade mentioned in Exhibit 7-B?

MR GIBBS: Objected to as leading and no foundation laid for its admission, the witness having already testified that they were not examined upon any of these subjects.

MR. FELIX: The witness has not stated that. He may answer any way.

MR. GIBBS: It also calls for the conclusion of the witness.

A Yes, sir.

RE-CROSS EXAMINATION BY

MR. GIBBS:

Q How many of these first, second, and third grade students did you examine personally?

A Personally, I don't remember how many I examined.

Q How many other examiners are there in your bureau?

A Well, around twenty. I have not counted them. That may be verified from our record, from the list of employees we have got.

Q What does "First grade" mean here in Exhibit 7-C? What does that mean?

A "First Grade" means first grade examination.

Q First grade of what?

A We call it first grade examination.

Q What is the first grade examination?

A Do you mean the subjects?

O Yes, the subjects.

A Subjects of the first grade examination?

Q Yes.

A We give spelling, arithmetic, composition, copying from rough draft, general information.

Q And on what subjects do you examine under the second grade?

A Well, under present requirements we give spelling, arithmetic, letter writting, penmanship, and general clerical tests.

Q And under the third grade?

A We give spelling, arithmetic, letter writing, penmanship, and copying from plain copy.

Q How do you ascertain that they are bookkeepers, if you don't examine them in bookkeeping?

MR. FELIX: Objected to as lacking foundation. The witness has not said anything like that.

A There is no subject called bookkeeping in the clerical examination. There is no separate subject called book-keeping.

Q How do you know whether he understands bookkeeping unless you examine him on that?

MR. FELIX: Objected to, this witness has not stated that those who pass the first, second, and third grade examinations are bookkeepers.

A I did not state that they know bookkeeping. I did not state that those competitors who pass the first, second, and third grade are qualified bookkeepers.

Q Mr. Rosario, from your elementary knowledge of bookkeeping, what would you say as to whether or not there was any difference between the science of bookkeeping and arithmetic?

A What do you mean by the "science" of bookkeeping?

Q Well, let's simplify it by saying "Bookkeeping" and "Arithmetic". Is there any difference between the two subjects?

A Well, arithmetic must be the foundation of bookkeeping.

Q A man can't be a bookkeeper without being an arithmetician, but he can be an arithmetician without being a bookkeeper, can't he?

A Yes, sir.

Witness excused.

MR. FELIX: For the benefit of the reporters and the record, I wish to state that while the witness Leuterio was on the stand this afternoon, he read certain data into the record from these letters, and I now mark them as Exhibit 6-D and 6-E. At the beginning of the testimony of the witness Leuterio this afternoon I made certain observations for the record, and I now repeat those statements as to the witness Amado del Rosario.

The hearing at this point was suspended until November 15, 1923, at 3:00 o'clock p. m.

SESSION OF NOVEMBER 15, 1923.

The above entitled cause came on for a continuation of the hearing on this 15th day of November, A. D. 1923, at

3:00 o'clock p. m., and the following proceedings therein were had, to wit:

The same appearances were noted as at the previous hearings.

T. W. Parkin acted as stenographic reporter (English).

The witness WENCESLAO TRINIDAD, who had previously testified, was recalled to the stand as a witness on behalf of the respondents, and after having been duly warned that he was testifying under the same oath, testified as follows:

CROSS EXAMINATION (Continued) BY

MR. GIBBS:

Q Mr. Trinidad, you have stated that it was at the suggestion of the Governor General that you and the Secretary of Justice, Mr. Santos, prepared the amendment, Exhibit J?

A Yes, I said that.

Q Now, when and where did the Governor make that suggestion, Mr. Trinidad?

A I can not tell you when; I have forgotten the date, but the place was at his office in the Executive Building, at Malacañang.

Q Could you state approximately how long before the proposed amendment was prepared and forwarded to the Legislature?

A I can not tell you that.

Q Your recollection would be that it was shortly before, would it?

A Shortly before what?

Q Shortly before the proposed amendment was prepared by you. Your recollection would be that the inter-

view with the Governor Genral was shortly before you prepared the proposed amendment, is that true?

A Yes, sir.

Q Who was present at that interview?

A I think Secretary Santos was present himself.

Q Now what did the Governor General say to you about the amendment?

MR. FELIX: I wish to have it appear that I object to this question or this line of questions, as immaterial and irrelevant.

A After discussing this question of the accounting law, he asked me and Secretary Santos to draft an amendment.

Q Did he make any suggestions to you as to what the amendment should consist of?

A After giving his points of view, he left that question with us.

Q He left it to you and Secretary Santos to suggest a form in which an amendment should be prepared?

A Yes, sir, to prepare along the lines, that is, he gave us some reasons which of course I can not remember, I do not remember, and then he asked us to prepare the bill along that line.

Q Did you and Secretary Santos suggest any form of amendment previous to the time that he told you to prepare the amendment?

A No, sir.

Q What you did at that interview was to discuss the objectionable features of Act 2972?

A Not exactly that point.

Q Well, what did you discuss at that interview?

A Certain matters that were brought to us by the Governor General?

Q Well, were there any suggestions or statements made by you or the Secretary of Justice, or the Governor General, as to Act 2972 being objectionable in form or substance?

A In that meeting?

Q Yes.

A I do not remember having made any objections to the form of the law.

Q At all events, when you and Secretary Santos prepared the proposed amendment, Exhibit J, you yourselves originated the form of the amendment?

A Yes, after hearing the explanation of the Governor.

Q What was that explanation of the Governor?

A I do not think that I can exactly remember it and reveal it at this time.

Q You don't remember what statements were made to you by the Governor General?

A No.

Q If you remembered what took place at that interview, you would of course have no objection to disclosing it, would you?

A Well, that question, that being a confidential meeting, I doubt whether I will be at liberty to disclose whatever the Governor might have mentioned to me.

Q At all events, you don't remember it, and can not disclose it, is that it?

A I don't remember what he stated in that meeting.

Q So that you couldn't reveal it if you wanted to, not remembering what was said?

A Well, of course, if I could remember, I do not think that I would be in position to reveal it out, because it was a confidential meeting.

Q Well, the Governor General hasn't requested you to guard what was said at that meeting as a secret, has he?

A No. It is not necessary that we should be requested to keep a secret, what we know to be a secret.

Q If I understand you correctly, you were the author of the proposed amentment, Exhibit J?

A Author in the sense that we drafted it, but not exactly the ideas contained in that amendment.

Q Well, if the Governor General didn't specify what should be included in the proposed amendment, but left its form to you, how do you escape the conclusion that you were the author of the proposed amendment?

A If we are given a task to be done, we need not be told the details. We can work out the details and carry out the idea.

Q What was the task that was imposed upon you to perform?

A Just to draft the amendment in a due form.

MR. FELIX: I wish to insist in my objection to the line of questions being put by counsel for the petitioners on the ground that it is completely immaterial and irrelevant, and it is completely immaterial and irrelevant because the constitutionality of a law which has been approved by the legislature should not be judged by the proposed amendments which the Governor General or any other member of the Cabinet may suggest to the legislature.

Q When you prepared and proposed the passage of Exhibit J, you did so of your own free will, did you not, Mr. Trinidad?

A Well, as I told you from the beginning, we drafted the

bill after the conference with the Governor General.

Q Yes, but getting right down to bed rock, Mr. Trinidad, you don't contend that the Governor General coerced you to do something that you did not think was right, do you?

A No, I did not mean that.

Q In the preparation and recommendation of this proposed amendment, you were acting in good faith as a conscientious public official, were you not?

A Yes.

Q And you were acting in the belief that when you recommended the passage of this proposed amendment that it would be an improvement on Act 2972, or you wouldn't have proposed it, would you?

A If we are to consider that the proposed amendment, if I am asked whether the proposed amendment is an improvement of Act 2972, or the so called Chinese Accounting Law, I would say no.

Q Then do you mean to say that you, as a public official of the Philippine Government, recommended the passage of an Act that you believed should not be passed?

A I have not said that I recommended it. I have drafted it.

Q Isn't it a fact that you not only drafted that act, but that you prevailed upon and induced Secretary Barretto to forward it to the Legislature and recommend its passage?

A I have not induced Secretary Barretto. I presented the bill to him, explained why it was prepared, and then he endorsed the bill to the Governor General.

Q Well, he recommended it also to the Legislature, didn't he?

A To the Governor General; we do not send bills to the Legislature directly.

Q You drafted and finished that bill with the expectation or hope of having it passed, didn't you, that amendment?

A Yes.

Q And as a conscientious public official, you would not have presented and attempted to have passed an amendment of a law, if you didn't believe that the amendment was a good thing for the service, would you?

MR. FELIX: Objected to as already answered.

A As I said, I have not recommended it, but the bill was drafted for a certain purpose, which was explained to us by the Governor General, and I told you that I could not remember.

Q Were you in accord with the discussion and recommendations of the Governor General as manifested in that proposed amendment?

A No.

Q So what you mean to say is that you, as the chief of the Bureau of Internal Revenue, undertook to have an Amendment of Act 2972 passed when you did not believe that it ought to be passed?

A I have not undertaken to have it passed. I just followed the instructions of the Governor General to draft the bill, submit the bill in the form that he wanted it to be prepared.

Q Well, then you assisted in attempting to bring about the passage of an act which you believed ought not to be passed, is that it?

MR. FELIX: Objected to as the question calls for

a conclusion which should be drawn from the previous answers.

A My position does not give me the discretion or power to shape the policy of the central government.

Q Isn't it your duty as the chief of the Bureau of Internal Revenue to limit yourself in assisting in the passage of such laws as you believe to be for the good of the service?

A Yes.

Q And in your efforts in connection with the proposed amendment, Exhibit J, did you comply with that duty or not?

A I wish to answer by explaining that as Collector of Internal Revenue, of course my duty is to recommend such amendments to the Internal Revenue Law as I may think it necessary, but we are dealing with the Chinese Accounting Law, which is a general law. It does not belong to the Bureau of Internal Revenue.

Q But you know, don't you, Mr. Trinidad, that the purpose of this Act 2972, related exclusively to your Bureau, do you not?

A I do not think so.

Q All right, sir, now what other purpose, as far as you know, was involved in the passage of Act 2972?

A Well, it would serve the Insular Treasury, the Bureau of Internal Revenue, and the police officers of the government.

Q In what way will it serve the police officers of the government?

A You take the case of certain establishments subject to the inspection of the police officers.

Q Are the police officers authorized to inspect the books of merchants?

A No, but I believe that they are authorized to examine certain records which municipal ordinances require to be kept by certain establishments.

Q You don't know what records these are?

A Well, I may cite one or two, the records of hotels and pawnshops.

Q And the Treasury Department, what inspection of books do they make?

A Insurance companies and banks.

Q Do you know history of Act 2972?

A No.

Q Don't you know that it originated with your office?

A I am sure—Act 2972?

Q Yes. I don't mean when you were in charge, but didn't the law originate, or didn't that law or a predecessor of that law, originate in your office?

MR. FELIX: Objected to especially as immaterial, in so far as it refers to any proposed law which is not the proposed law which later became Act 2972.

A I have heard that my predecessor in the Bureau of Internal Revenue made some recommendations about the keeping of the records of merchants.

Q At the time that you and Secretary Santos completed Exhibit "J", or at any time subsequent thereto, did you ever say to the Governor General that it was not a proper amendment to make of Act 2972?

A No, except that we had another conference when we learned that the Legislature would not consider favorably the proposed amendment.

Q And then you disccussed the advisability of passing the

proposed amendment in Exhibit "I" (showing witness Exhibit "I").

A I do not remember whether this bill was the first or the second prepared.

Q Perhaps it will assist you in refreshing your memory to examine again the letter of the Secretary of Finance, Alberto Barretto, dated December 16, 1922, forwarding the proposed amendment, Exhibit "I", to the Governor General of the Philippine Islands.

A Then this Exhibit "I" was the one submitted after it was heard that the first proposed amendment, Exhibit "J" would not merit the approval of the legislature.

Q So that according to your recollection, it was Exhibit "I" that was discussed at the conference at which Mr. La'O was present?

A No, it was another, which has never been put in shape.

Q Do you remember what the contents of the proposed amendment was which was discussed in the interview at which Mr. La'O was present?

A By reading this Exhibit "I", I think that what the representative of the Legislature wanted was a translation in the books themselves.

Q A translation of the books?

A Of the entries contained in the books.

Q Whenever it might be required?

A No, that is, they have to translate the entries made in the books.

Q In other words, that bill was to require a duplicate set of books to be kept.

A Not necessarily, because I remember that that bill authorizes that the translation can be made in the same book, Chinese book.

Q But with your knowledge of the form in which Chinese books of account are kept, you know that would be impossible, don't you?

A Well, if they will leave the space between the letters, I think they can insert the translation there.

Q But unless the translation was simply interlined in ten Chinese books of account, there would be no place for it, would there, taking into consideration the form in which Chinese books of account are kept?

A Of course there will be none if they do not leave space enough to give room for the translation.

Q So according to your recollection of the interview at which Mr. La'O was present, the amendment then and there proposed was never formulated into a concrete proposed amendment?

A No.

Q Now referring to Exhibit "I", was that proposed amendment submitted to you for your approval?

A No we drafted this. That is, the Secretary of Justice and myself drafted also this.

Q So when you and the Secretary of Justice failed to secure the passage of the proposed amendment, Exhibit "J", you tried to have the proposed amendment, Exhibit "I", passed?

A Well, that appears to be the case.

Q As I understand you, you and Secretary Santos drafted this proposed amendment, Exhibit "I", in an endeavor to overcome the objections of the Legislature to Exhibit "J", is that true?

A Yes.

Q And in drafting and in procuring the presentation of this proposed amendment, you were acting conscientiously as a public officer, were you?

A I was acting in the same spirit as in the other.

Q The Governor General didn't exercise any coercion or oppression over you?

A No.

Q And you were acting of your own free will?

A Following the instructions of the Governor General as a public officer.

Q And you made no protest to him that you were acting contrary to your own judgment as to the advisability of the proposed amendment, did you?

A No.

Q And, Mr. Trinidad, you wouldn't have consented to be a party to an act which you believed would be detrimental to the government, would you?

MR. FELIX: Objected to as he has already answered a similar question in relation to Exhibit "J".

A It all depends. I have no power to shape the policy of the government. I am not the supreme authority to decide what is detrimental and what is not to the contrary.

Q Well, what law or regulation of government would require you to draft and take such part as you took in an endeavor to secure the passage of these two proposed amendments if you didn't believe them to be for the good of the service?

MR. FELIX: Further to my general objection, I object especially to this question as being completely immaterial and irrelevant, and as it is a question of law which can be discussed before the court and decided by the court without the aid of the witness.

A In the government, in addition to our duties specifically stated by the laws, we also recognize it to be our

duty to follow such instructions as the Governor General may give us, whether it is within our sphere of action fixed by law or not.

Q And it doesn't make any difference whether these recommendations of the Governor General are for the good or to the detriment of the govenment?

A If the Governor General has made up his mind, he is the one essentially responsible to the legislature for things which he recommends.

Q Did he put anything in writing to you instructing you to prepare amendments as Exhibits "I" and "J"?

A No.

Q In what way did he make himself responsible for any mistakes that would be put in those amendments?

A Because all bills before going to the Legislature pass through the office of the Governor General.

Q But as I understand you, you do not remember what the Governor said to you about either one of these proposed amendments?

A What I said is that I do not remember exactly what was the purpose of the Governor General.

Q Do you remember what was the substance of his statements to you with reference to the preparation of these proposed amendments?

A That is what I said, I don't remember.

Q Then upon what do you found your statement that those amendments were the result of instructions of Governor General, these proposed amendments?

A Well, I remember that we drafted those two amendments, and we know that we drafted them after conference with the Governor General.

Q But isn't it a fact, Mr. Trinidad, that all the Governor

General did was to express the objections of the Chinese community to having their keeping of books in Chinese penalized, and his desire to obviate the harshness of such a provision, isn't that all he said to you?

A No.

Q If he said anything else to you, you don't remember what it was?

A I don't remember, really, what he wanted to accomplish.

Q And you don't remember what he said to you?

A No.

Q How many of the eighty five Filipino inspectors speak any of the local dialects?

A They all speak their own dialects.

Q What local dialects do they speak?

A That depends upon what dialect the province they come from is speaking. I can not tell exactly how many of them are Ilocanos, Tagalogs, or Visayans.

Q In how many different local dialects are books of account which are inspected by your office kept?

A I do not know?

Q Have you any accurate knowledge on the subject at all?

A No.

Q Don't know anything about it?

A No.

Q Have you yourself inspected any books kept in any local dialect?

A No.

Q Are the books of any business establishment of importance kept in any local dialect?

A I do not know.

Q What local dialects, if any, do you read or write, Mr. Trinidad?

A I think I can read all the dialects, but with the exception of two or three, I do not think I will be able to understand, because we use the same letters.

Q You mean that you could recognize the distinction between "a" and "b"?

A Yes, because they are written the same way and pronounced in the same way.

Q But you don't know what the word mean when you see them?

A No, when they are written in other dialects that I do not know.

Q What dialect do you know?

A I know my own, Tagalog.

Q Were you educated in Tagalog or Spanish?

A In Spanish.

Q So that all you know about Tagalog is what you have picked up by hearing it spoken?

A Yes.

Q You never did study it?

A No.

Q And you couldn't read or write a letter in Tagalog if you tried?

A I think I can.

Q Have you ever done it?

A Yes, and that is the dialect spoken in my house.

Q You speak that to your servants?

A And to my boys too.

Q Outside of Tagalog, you wouldn't be able to intelligently inspect books kept in any local dialect of the Philippines?

A Accounting books?

A Yes.

A I think I can.

Q You could read figures, if the figures were the same as in Tagalog?

A Well, the figures are the same all over the Philippines, except the Moro.

Q Do you mean to say that all that is necessary in inspecting a set of books is to be able to read the figures?

A No, but to know also the nature of the entries.

Q If you don't know the words that are written in a book of account, do you mean to say that you can intelligently inspect them, nothwithstanding the fact that you can not read the written words.

A There are very few words used in accounting books.

Q How can you undertake to testify as to how books of account would be kept in any local dialect other than Tagalog, when you don't know these dialects?

A Ordinarily the words written in the accounting books are very few and they are not hard to learn, to keep in mind. They are not writing literature in accounting books. They use simple words.

Q Well. do you know that in ordinary sets of books, that the names of the various articles are written there, do you know that?

A Yes, and the names of articles of merchandise are ordinarily written as the name given here in Manila.

Q Do you mean to say that the names of articles of merchandise are the same in all local dialects?

A They are not translated into local dialects, as a general rule.

Q How do you know, Mr. Trinidad, if you don't know the

local dialects, and have never inspected any books kept in them?

A Well, I have seen books long before I became Collector of Internal Revenue.

Q What books?

A Books of the small merchants in the provinces.

Q What provinces?

A I have been in eight provinces in the Philippines?

Q When?

A That was long before I became Collector of Internal Revenue. I have been in Cagayan, Isabela, Pampanga; they are not Tagalog provinces.

Q What were you doing there?

A Provincial Treasurer.

Q Were you inspecting books of account?

A No, but it was necessary to have seen some books of account.

Q Well, did you examine any books of account?

A I have seen some of the books.

Q Did you examine them?

A No, but I saw the items. They write the merchandise with the same name given here in Manila.

Q All articles of merchandise?

A Yes.

Q You are sure of that?

A Except probably local products.

Q It doesn't make any difference what article of merchandise it is, it was written the same in all dialects. Do you know how many dialects there are in the Philippine Islands?

A I can not tell you that. I do not know.

Q Well, can you give us an approximate idea?

A I think all the dialects here can be written.

Q Can you approximate the number of local dialects in the Philippine Islands?

A I do not know.

MR. FELIX: This witness was not presented as a linguistic expert.

Q Did you ever examine any books kept in Panayano?

MR. FELIX: Objected to as the witness has testified that he has not inspected any books written in any dialects of the country.

MR. GIBBS: He said he did.

A I said I happened to see some books. I didn't say that I inspected them.

Q How did you find out that the names of the various articles contained in them were written just the same as in all other local dialects?

A What I said is that they use the same name for the article given here in Manila.

Q Well, how did you find that out?

A Because I have seen in Cagayan, which is Ibanag dialect, using in their books the same name of the articles here in Manila, that is, the imported articles.

Q That was in what dialect?

A Ibanag.

Q Did you ever see any books kept in Panayano.

A In Panay Island?

Q I don't know. You know more about the dialects of your own country than I do.

A I do not remember.

Q Did you ever see any books of account kept in Cebuano?

A No.

Q Ilocano?

A No.

Q Bicol?

A No.

Q Pampango?

A No.

Q Pangasinan?

A No.

Q Did you ever examine any books kept in Tagalog?

A No.

Q Do any of the merchants in Manila keep their books in Tagalog?

A There must be some.

Q Do you know that there are eighty seven dialects in the Philippine Islands?

MR. FELIX: Objected to as completely immaterial.

A I will not be surprised if there are eighty seven.

Q And notwithstanding the fact that you are only familiar with one of these dialects, you are prepared to state that you can intelligently inspect books of account kept in any one of the eighty six other dialects half trying?

A If written in characters that I know, I can do that.

Q But you don't know any of the words written in any other language other than English or Spanish?

A I can find that out very easily.

Q You have never been interested in the subject of whether or not you can intelligenly inspect and undestand books of account kept in any local dialect, have you?

A No.

Q Is there any reason, so far as Act 2972 is concerned, that you should be able personally to inspect and under-

stand the books of account kept in Chinese characters the books of account kept in the local dialects?

A Books kept in the local dialect can be read by any Filipino.

Q Books kept in Chinese characters can be read by any Chinese inspector or accountant, can't they?

A Yes, that is correct.

Q So what is the difference, so far as the head of the department is concerned?

A The difference is that he can find all the men he needs to inspect the books kept in local dialects, while he cannot find the number of men needed to inspect the books kept in Chinese characters.

Q Not knowing in what dialect books of account are kept in the Philippine Islands, how are you able to make that statement?

A Well, as I said, most of our agents are Filipinos, and they come from all the provinces, speaking different dialects.

Q If I remember your previous statement correctly, the average number of Chinese accountants kept by the Bureau of Internal Revenue since you have been connected with it, has been about eight.

A Not the average. That is the highest number we ever had.

Q Well, how many did you have when you ceased active management of the office this year?

A I don't think it will be over five.

Q Does the appropriation for your office specify the number of Chinese accountants you are allowed?

A Yes.

Q How many Chinese accountants are allowed under that law?

A I don't recollect how many, but in addition to those positions specifically allowed, the Bureau, has another appropriation fund for hiring employees.

Q Now, what salaries do you pay to your Chinese accountants, Mr. Trinidad?

A I do not remember. I think the head of the Chinese inspectors gets three hundred pesos or over a month.

Q Is he the Chinaman who has been in almost constant attendance here in court, assisting the fiscal?

A I do not know.

Q What is his name?

A Sy Siangco.

Q Is he an honest, reliable Chinaman?

A Nothing has been proved against him yet.

Q Do you believe every Chinaman is dishonest until he proves the contrary?

A No.

Q Are your Filipino agents honest men?

MR. FELIX: Objected to as completely immaterial.

A Well, they are kept in the office in that belief, that they are honest, and they are discharged immediately we discover that they are not honest.

Q Have you discharged a good many Filipino inspectors for dishonesty?

A Yes.

Q How long has this Sy Siangco been employed by your office?

A I have not any idea. I think he has been there for a long time.

Q Has he the reputation of being a very honest, reliable employee?

A That is as I said, that we keep men in the assumption that they are honest.

Q And you have at least four or five more Chinese inspectors in your office now whom you believe to be honest men?

A Yes.

Q Do you keep any record of the character of the Chinese employees or Filipino employees whom you have in your office?

A Yes.

Q I refer to the office of the Bureau of Internal Revenue. You are still the Collector of Internal Revenue, are you not?

A My status is that I am on leave without pay.

Q Have the Chinese capable of inspecting and translating Chinese books of account increased or decreased during the last ten years?

A In ability to examine?

Q The number of Chinese capable of examining books of account kept in Chinese, and of translating them or interpreting them into English or Spanish.

A I do not know.

Q Do you mean to say that you have been unable to employ as many Chinese inspectors as you wanted?

A Yes.

Q What do you pay your other Chinese inspectors?

A One hundred and fifty.

Q One hundred and fifty pesos?

A Yes.

Q What do you pay your Filipino inspectors?

A The best and oldest Filipino agents or sub agents get one hundred and fifty pesos a month, because we have agents and sub agents in our service.

Q What do your agents receive?

A Agents are required to pass the first grade examination in English, and they get from two hundred pesos up. Sub agents are second grade eligibles.

Q And notwithstanding the fact that Chinese inspectors have to know the Chinese language, in addition to English or Spanish, you don't pay them over one hundred and fifty pesos a month, with the exception of the chief inspector.

A No; that is the entrance salary. They have to show first what they can do before we pay them bigger salaries than that.

Q Well, what grade do the Chinese inspectors belong to?

A No examination is required, to give us facility to secure the services of the number of men that we need.

Q What efforts have you made to employ Chinese accountants?

A We have been trying to find suitable men for the place.

Q How do you go about trying to find them?

A Making inquiries about Chinamen who want to work for us.

Q Do yu make these inquiries personally?

A No. Our chief agent is in charge of that.

Q Who is your chief agent?

A Mr. Camantigue.

Q Did you ever instruct Sy Siangco to find you Chinese accountants?

A I do not know whether the Chief Agent has instructed him or not.

Q Did you ever advertise in the newspapers for Chinese accountants?

A No.

Q Did you ever post any notices that you desired more Chinese accountants?

A No.

Q Did you ever request the Chinese Chamber of Commerce to furnish you Chinese accountants?

A No.

Q Did you ever obtain any written report from Camantigue as to his inability to obtain Chinese accountants?

A What I remember is that he investigated several names of Chinese persons who wanted to be employed and he reported that—

Q I am making you a definite question.

MR. FELIX: He hasn't finished his answer.

MR. GIBBS: I object to the witness volunteering statements calculated to prejudice the petitioners, which are not responsive to my questions.

MR. FELIX: The witness has a right to explain all his answers. If he thinks that is an explanation to swer to my question which are not responsive.

MR. GIBBS: I can't keep him from saying anything he wants to, but I am telling Mr. Trinidad as a conscientious gentleman that he must not volunteer answer to my question which are not responsive.

Q (Question was repeated) Did you ever obtain any written report from Camantigue as to his inability to obtain Chineses accountants?

A He does not write reports when he can secure the services of agents or Chinese inspectors, except when he advises us of the applicants that he has rejected.

Q Upon the meager basis which you have just recounted as to the availability of Chinese accountants, you

are willing to testify that there are no available competent honest Chinese for accounting purposes?

A No.

Q Then you don't know whether there are plenty of honest, competent Chinese available for employment as accountants or inspectors or not?

A I do not know.

Q Now the statement that you made in this Exhibit 3 as to five former Chinese accountants having been discharged for graft, was that based upon your own personal knowledge?

A As a matter of record in the Bureau of Internal Revenue.

Q And these accountants discharged, were they discharged by you, or had they been previously discharged?

A I remember having discharged some, but I don't remember whether I have discharged them all.

Q You don't know whether the five Chinese accountants stated in your endorsement to have been discharged for graft, included all of the Chinese accountants who have been discharged for graft during the entire history of the Bureau or not?

A I do not know.

Q You don't know the names of these five, and you don't know what graft they were guilty of?

A I remember distinctly the last case I had. He was caught in the act of receiving a bribe, and he was convicted in court.

Q That is the only one you remember?

A That is the last one I remember.

Q In what year did that take place?

A This year or last year, I don't remember.

Q I take it from the statement in Exhibit 3 that up to the time of the writing of your endorsement, the total number of Chinese employed during the existence of the Bureau was seventeen?

A Yes.

Q Since that time there have been additional Chinese employed?

A I suppose.

Q Do you know of any Chinese accountant having been prosecuted, other than last one that you mentioned?

A I do not know. I can not mention any specific case.

Q Mr. Trinidad. you have read the petition in this case, have you not?

A Which petition.

Q The petition for prohibition?

A I don't remember whether I have read it.

Q At the time it was presented, you remember that it referred to an article in the Bulletin purporting to contain an interview with you of March 2, 1923, as to your intention relating to the prosecution of persons violating Act 2972?

MR. FELIX: Objected to as the question is beyond the limit of the direct examination. There was nothing on that in direct examination. Objected to furthermore as completely immaterial and irrelevant.

A I do not even remember having read that statement in the Bulletin, because on March 3rd I think I left Manila for Negros.

Q Do you remember of having stated at the time these prosecutions were begun that they were not the only prosecutions that would be begun, but that all other violators of the law would be likewise prosecuted?

A I do not remember that.

Q You don't remember whether you made the statement?

A I don't remember having made any statement like that.

Q Did you ever discuss with the prosecuting attorney whether or not you would treat these two cases merely as test cases, or whether you would prosecute all violators of the law?

A Well, I did not have any conference whatsoever with the prosecuting attorney.

Q And you do remember, don't you, of the various interviews that Mr. La'O had with you in order to avoid prosecutions after the injunction was issued by the Supreme Court?

MR. FELIX: It appears from the testimony of Mr. La'O himself that it was not with the witness that he had conference.

A What I remember is, I think it was Mr. La'O who gave me the name of the Chinaman to be prosecuted in order to have this case tested in court, and that is the man which, after investigation, I found that he was really violating the law. That was the man we reported to the city fiscal.

MR. GIBBS: At the time I asked you about the interviews, I had you in mind, but I believe that they were had with Mr. Posadas.

RE-DIRECT EXAMINATION BY

MR. FELIX:

Q Testifying regarding the examinations which the agents and sub-agents have taken, and answering a question of Mr. Gibbs, you stated that the agents were first

grade eligibles, and the sub-agents second class eligibles. Eligible in what examination?

A Civil service of the Philippines.

RE-CROSS EXAMINATION BY

MR. GIBBS:

Q You never have authorized the offering of any higber salaries to Chinese accountants as an inducement to obtain a larger number?

A We do not offer salaries. What we offer is the position first. First we try him and then we speak about salaries.

Q But don't you know, Mr. Trinidad, that by offering larger salaries you could ensure the employment of more competent men?

A That is not our experience.

Q Have you ever tried it in order to test out the advisability of offering larger salaries?

A Our experience is that without advertising the salary, we get many applications.

Q You have many applications from Chinese accountants for positions?

A For positions, yes.

Q How many applications would you say that you had for positions as Chinese accountants within the last year previous to your ceasing active management?

A I can not tell you the number exactly.

Q But a great many?

A Yes.

Q Did you examine any of them?

A No. The chief agent is in charge of selecting the men for any position in his division.

Q Well, if you weren't able to find satisfactory employees from the numerous applicants who presented themselves, why didn't you endeavor to obtain them through such a reputable establishment as the Chinese Chamber of Commerce?

A As I said, the question of getting the necessary personnel for the inspection service is up to the chief agent.

Q And so far as you know, no applications were made through the Chinese Consul for competent, honest Chinese accountants?

A No.

Q You personally have no knowledge as to whether or not there are available in Manila or elsewhere in the Philippine Islands, competent, honest persons to act as Chinese accountants?

A I think that there are good, reliable, honest Chinese accountants in Manila.

Q Available for employment?

A I do not think that you can attract them to the service of the government, even if you pay them the salary of the chief of bureau, because many of them are holding responsible positions in commercial houses.

Q But you have no personal knowledge as to whether or not there are honest, capable men, available for employment as Chinese accountants at reasonable salaries?

A I think that there is a very limited number.

Q You have no personal knowledge on the subject, not having made any personal investigation of it, have you?

A Yes, but the fact that we are receiving applications from accountants means that there is a supply of Chinese accountants in the Philippines.

Q That proves to your mind that there is a good supply of Chinese accountants?

A Limited supply is what I said.

Q And you do not know personally whether those applicants are competent and honest or not?

A No, because I have not had a chance to look into their personal records.

Q Have you authority, as chief of the Bureau, to pay larger salaries to Chinese accountants that those which you have been paying heretofore?

A Yes.

Q Up to what amount would you be authorized to pay?

A I think that the Bureau can pay as high as four hundred pesos.

Q But you have never been so badly in need of Chinese accountants as to offer any large salaries for their employment?

A As I said, we never offer salaries to attract them, but we attract the services of men, and then when his ability is tested, we discuss the salary.

Q But don't you know, Mr. Trinidad, that in order to attract capable men that it is necessary to offer attractive salaries?

A That is true.

Q Have you needed more Chinese accountants than you have employed?

A Yes.

Q Then why didn't you offer more attractive salaries to them?

A We have been trying.

Witness excused.

A this point, the hearing adjourned until Monday, November 19th, 1923, at 3:20 o'oclock p. m.

The undersigned, a competent stenographic reporter, does hereby certify that the transcript appearing on pages 1 to 241, and such pages of this transcript as contain sessions held on November 12, 13, 14, 15, 1923, are a true and correct transcript, of the stenographic notes taken by me as appearing therein.

YU PEC KIN
Reporter.

Manila, P. I. November 16, 1923.

Friday, November 23, 1923.

The hearing was continued at 3:00 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

H. A. Bordner, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name, age, and occupation.

A H. A. Bordner, Superintendent of Schools, City of Manila, 51 years of age.

Q (Handing the witness Exhibit 8 of the Respondents) Handing you this document, which is marked for identification as Exhibit 8 of the Respondents, please state whether you recognize this document.

A I made this document, and the figures in this report are taken from the records on file in my office and they are true and correct so far as the City of Manila are concerned.

Q Will you please state to the commissioner what relation your office has with the public schools of Manila, the intermediate schools, and the high school?

A My office has charge of the public schools in the City of

Manila. It directs and superintends the work of those schools.

Q Can you state to the commissioner whether, with the knowledge of arithmetic possessed by a graduate of an intermediate school and of a high school of the City of Manila, he could keep the books of account of a commercial house?

MR. GIBBS: I object to that on the ground that there is no foundation laid for its admission, the witness not having shown his competency to testify on the subject.

A The intermediate graduates get a thorough training in the four fundamental operations, additions, subtraction, multiplication and division. In addition, they get training in fractions, decimals, percentage, profit and loss, banking and exchange—knowledge that is quite sufficient to cover any operations in bookkeeping in an ordinary commercial house. Those in the high school get, in addition, algebra, geometry, and advanced arithmetic. The advanced arithmetic is mostly commercial arithmetic.

CROSS-EXAMINATION BY MR. GIBBS:

Q Your idea of bookkeeping is that it consists of arithmetic, is it?

A The question put to me was whether these graduates had sufficient knowledge of arithmetic to keep books, and I said, "Yes".

Q Are you an expert bookkeeper?

A I have kept books in a bank, and I have kept books in a lumber yard.

Q Have you had a regular course in bookkeeping?

A I have taken a commercial course in the University of Indiana, which includes bookkeeping, commercial law, commercial arithmetic, and the usage of commercial operations.

Q What were the studies that you completed in that bookkeeping course?

A Bookkeeping, commercial law, manufacturing, the distribution of manufactured articles—that is, transportation—and the marketing of same.

Q Now, perhaps we can simplify the question here: it is not your contention that these graduates mentioned in this Exhibit 8 are competent to keep books without a course in bookkeeping, is it?

A I did not so state, because I said they had all the knowledge of arithmetic necessary to keep books, but I didn't say they were bookkeepers; that would not be true.

Q And they couldn't take charge of the books for a commercial house, and they couldn't keep books, without a course in bookkeeping, could they?

A I am not prepared to answer that question except in this way: single entry, yes, but a complex system of books, no.

Q What you mean to say is that the graduates mentioned in Exhibit 8 have a sufficient knowledge of arithmetic to keep books provided they be also taught in bookkeeping; isn't that it?

A I meant to say that these graduates had sufficient knowledge of arithmetic to keep all kinds of books, but they had no special training in what we call single entry or double-try bookkeeping.

Q In other words, they had no training in any kind of bookkeeping at all.

A Yes, because we have bills and accounts, and we teach them that; we teach them the debit and credit side, we teach them to make out bills and to receipt them, and whatever is needed for the common, ordinary business transactions is taught in our arithmetic in Grade 4, and again in Grade 5, and again in Grade 6.

Q. Well; all they know is which side of the sheet to put the credit on and which side to put the debit on.

A They know that.

Q And in addition to that, they know arithmetic?

A Yes, sir.

Q Now, Mr. Bordner, arithmetic is only one of the elements of the science of bookkeeping, isn't it?

A It is one of the elements, yes, sir.

Q Every bookkeeper necessarily knows some arithmetic, but every arithmetician doesn't know bookkeeping?

Q And the fact that a man is an arithmetician doesn't signify that he is a bookkeeper at all, does it?

A Not necessarily.

Q You know, don't you, that a man may be the finest arithmetician in the world and still not be able to keep books?

A I think that a man who has a knowledge of arithmetic and English can make simple entries in a single-entry form of bookkeeping, such as is used in many of the business houses throughout the islands.

Q You know, don't you, that practically every lawyer and every professional man and every merchant have as much education in arithmetic as the graduates mentioned in Exhibit 8?

MR. FELIX: I object to the question on the ground that it is wholly immaterial and irrelevant.

A That is correct; if they have any education at all; they have an education equivalent to that described by me, such as these graduates of the seventh grade posses.

Q The graduates mentioned here have only a very elementary education; isn't that true?

A No, sir, because they have completed their education in arithmetic and they get no further education in that subject. It is more than elementary: It is complete.

Q Well, the graduates mentioned in Exhibit 8 are people of very ordinary education, aren't they? They haven't reached the higher qualifications of a highly educated person, such as are obtained in a good university?

FR. FELIX: I object to the question on the ground that it is wholly immaterial. This witness has been called here to testify as to degree of knowledge of arithmetic that the graduates of the intermediate and high schools of Manila have, and not as to any other knowledge that they may have upon other matters that bear no relation whatever to arithmetic.

A The graduates of the intermediate schools have completed their education in what is known as the common branches. They will get no more education in the common branches if they were to take their doctor's degree from the university. They will get an education in additional branches and professional subjects after they leave the common schools.

Q Mr. Bordner, do you want to be understood by the court

as stating that these graduates can go into a commercial house and keep its books?

MR, FELIX: I object to the question on the ground that it has already been answered.

A I said at the start that these graduates are not graduate bookkeepers, but I said that they had sufficient knowledge of arithmetic and English to keep books.

Q But you also intimated that they could keep the books of a merchant without any further education in bookkeeping, didn't you?

A I did not; I said that they were able to keep the simple entries of the debit and credit side of a ledger, that's all.

Q But do you know what bookkeeping is in a mercantile or large commercial establishment?

MR. FELIX: I object to the manner in which the attorney for the other side is questioning the witness. The witness has a right to be treated with more courtesy.

A Yes, sir, I do, because formerly I was bookkeeper in a bank and in a lumber yard.

Q What bank were you bookkeeper in?

A In the Farmer's Bank at Brookston, Indiana.

Q How big a town is Brookston?

A It's a small town, but the bank is under the laws of the State of Indiana and the books are exactly the same as those kept in the larger centers.

Q What books did you keep?

A The books of the bank.

Q I want to know what books you kept: itemize them.

A It's a long time ago, but I kept the books of the receiving teller.

Q Tell me what books those were.

A They took into consideration all of the money received in that banking institution in the various branches, such as the savings bank and the regular deposits.

Q Now, Mr. Bordner, I want to know what you know about bookkeeping, and I want you to itemize the books that you claim to have kept in a bank.

A It is absolutely impossible.

Q You don't remember them?

A No, sir.

Q You don't remember what the names of the books are that are kept in a bank?

A No, sir, I say I don't know.

Q You don't know the names of the books that are kept in any commercial house, do you?

A I beg your pardon.

Q Let's have them.

A In the lumber concern I kept the journal—that was my part of the business, to keep the journal.

Q That was the extent of your interest in the lumber business: you kept the journal.

A It is seldom in a large house that one man keeps the entire set of books; it is parceled and divided out, just the same as in a bank, and my part was the journal and the ledger.

Q Did you keep both the journal and the ledger?

A Yes, sir, I made the entries from the journal into the ledger.

Q Would one of those graduates mentioned in Exhibit 8 be competent to do the work that you did in the lumber company?

A No, sir, they wouldn't but it isn't necessary in a small business concern; in a large business concern it is.

but not in a small one. No, I don't think that any graduate of a common school, or the high school, or the university, would be a competent bookkeeper in a large concern. Even if he were a graduate from the university, he would have to have a special course in bookkeeping.

Q Now, do you contend that the books of a merchant, for example, with a stock of goods of P10,000.00, ought not to be kept as carefully and scientifically as the books of a concern with P100,000.00?

A No, sir, I do not so contend, but I do say this, that for a small business man, he doesn't need all of the books of account that a large business concern needs. That I know from experience.

Q What business did you ever run of your own?

A I worked in the lumber company, as I told you, and I was in charge of the business end in the office—such as one man may be put in charge of.

Q You had a subordinate position as a bookkeeper?

A Yes, sir, I wasn't the chief bookkeeper

Q You kept just one branch of the books?

A Yes, sir, the journal and ledger.

Q And you never had any commercial business of your own.

A No, but I worked in a commercial firm, as I said, and I am running a pretty big business right now, because my expenditures in the City of Manila run to P1,400,000 and I am keeping books right now.

Q Are you keeping your own books?

A I am directing it. I have an accountant, but I certify it.

Q You have to have an accountant to do the work?

A I could do it myself, but I am doing too many other things.

Q You think you could do it?

A I have worked at it; certainly, I know how to keep books I couldn't be in charge of the business I am if I didn't.

Q What kind of a set of books do you contend could be kept by the graduates shown in this Exhibit 8?

A Well, I believe that small single-entry bookkeeping, debit and credit columns, amounts of sales and incomes—I think they could do that.

Q You mean that if they happened to be sufficiently practical they could write down the amounts of the sales and the cost of the goods that they paid, do you?

A Yes, they could do that.

Q Could they do anything more than that?

A They couldn't keep a complicated set of books; I didn't so contend from the very beginning.

Q What I want to get at is what you mean by these graduate's keeping books at all. What kind of books—what kind of business—could they take care of? That's what I want to know.

A I doubt very much whether young people could take care of any business, and therefore these graduates couldn't take care of any business. I didn't come here so to testify.

Q Don't you know that any merchant's business, if it is carefully handled, has to have a complete set of books?

A Yes, sir.

Q. And a trained bookkeeper?

A Yes, sir, but there's nothing where these fellows couldn't work under a trained bookkeeper and keep certain books—that's what I contended all the time.

Q You contend that these people might be taught bookkeeping with what knowledge they have of arithmetic?

A Yes, sir.

Q But they wouldn't be competent to take charge of any Chinese merchant's business in the City of Manila, would they?

A I am not prepared to answer that. I believe that they could in the small establishments, but not of the big establishments, no, sir.

Q Well, if the books were kept carefully and systematically, could they keep them?

A Of a small business concern, yes, sir.

Q How small?

A Well, that of course I couldn't say.

Q Do you mean a business of a hundred pesos a year?

A No, I mean such a place of business as we find in the ordinary Chinese tiendas on the corners.

Q Do you know anything about the extent of their business?

A No, sir, I don't.

Q So you don't know whether it is extensive enough to require a bookkeeper or not.

MR. GIBBS: I object to the question on the ground that the witness has already stated that he is an educator and not a business man, and is not competent to answer it.

A Two years. I know this because I have a commercial school under my supervision, and we turn out bookkeepers every two years.

Q It appears that you do not understand the question; my question is, what period of time would the graduates of the high schools and intermediate schools of Ma-

nila need in order to acquire the knowledge necessary to keep a complex system of mercantile books of account? I am not asking you about the knowledge of arithmetic necessary to keep books, but as to the other branches of knowledge related thereto, such as the Code of Commerce and other details.

MR. GIBBS: I object to the question on the ground that the witness has admitted that he is not competent to answer it, and furthermore because he has already answered the question as far as it is possible for him to do so, the question calling for a statement as to the keeping of a complex set of books, and if it is not necessary for a man to be a graduate bookkeeper in order to keep a complex set of books, then it is difficult to understand for what reason a man should ever graduate from a bookkeeping course.

A The students in the commercial school will require six months' study in arithmetic and six months' in commercial law before they are given certificates as bookkeepers.

RECROSS-EXAMINATION BY MR. GIBBS:

Q And in addition, how much time do they have to devote exclusively to the study of bookeeping?

A I will answer that question also: the students in the commercial school study the subject of bookkeeping for two years before they are given certificates as bookkeepers. They study both single-entry and double-entry bookkeeping.

There being no further question, the witness was excused, and withdrew.

Jose V. Hernandez, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name, age, residence, occupation, and whether married or single.

A Jose V. Hernandez, 31 years of age, single, residing in Manila, director of the Jose Rizal College.

Q The other day, when Mr. Fabella was testifying, he promised Mr. Gibbs that he would bring in some letters which the Jose Rizal College has received from various universities in the United States. Have you those letters with you?

A Yes, here they are. (The witness producing various letters, which were marked for identification, respectively, as Exhibits 9—A, 9—B, 9—C, 9—D, 9—E, 9—F, 9—G, 9—H, 9—I and 9—J.)

Q I notice that some of these letters marked as Exhibits 9—A, 9—B, etc., are addressed to the Far Eastern College. Can you state to the court what relation there is between the Far Eastern College and the Jose Rizal College

A We were formerly known as the Far Eastern College, School of Accounts, Commerce and Finance.

Q What relation is there between the Far Eastern College, School of Accounts, Commerce and Finance, and the Jose Rizal College?

A It is the same school. The name was changed due to the great amount of confusion that took place in the post office and in our official relations with the Department, which resulted in letters addressed to us being delivered to the Far Eastern College—because

another college of that name existed—and vice versa, and it was difficult to remember the balance of our name, which was "School of Accounts, Commerce and Finance," and in order to remedy that confusion, we decided to change our name to our present one.

A I know nothing about them.

Q Do you know Mr. Nolting?

Q Do you know that he is a thoroughly high-class accountant and business man?

MR. FELIX: I object to the question on the following ground: It is not the purpose here to bring out by the testimony of this witness the kind of experience that some of the witnesses for the petitioners may have had. This witness was called here to testify as to the degree of knowledge of arithmetic that the graduates of the high school and the intermediate schools of the City of Manila have, and the examination of the witness should be limited to this point only.

MR. GIBBS: I know that neither you nor I can read a set of books and understand them. Although I am a high class arithmetician myself, I can't even read them and understand them.

A I do know it.

Q If Mr. Nolting says that it is necessary to have a person trained in bookkeeping to keep the books of account of any mercantile establishment, and that the accounting of a mercantile establishment of any size is absolutely essential to its success, what do you say as to the correctness of that statement?

MR. FELIX: I object to the question on the same grounds as those stated for my previous objection, and I ask

that the clerk of court who is acting as commissioner in this case instruct the witness that he is not obliged to answer, and in case he cannot do so or does not desire to do so, I ask that the examination of this witness be suspended until the question is determined by the Supreme Court, because it would establish a very bad precedent in this case, and would unduly prolong this hearing, to permit each one of the witnesses of the respondents to be questioned as to the experience and knowledge that the witnesses of the petitioner may have.

MR. GIBBS: It is one of the most competent and proper questions on cross-examination that could be put; it is perfectly fair and just to the witness, and—although my young and inexperienced friend doesn't know it—it is one of the most common methods of cross-examination known to the profession.

MR. FELIX: I object to proceeding further until the Supreme Court determines the question, and we will then see who best knows the rules of procedure, whether this young and inexperienced lawyer or the old and experienced lawyer Mr. Gibbs knows the most.

COMMISSIONER: Are you willing to testify—to give that information?

A I must admit that I am an educator, and not a business man, at the present time, and therefore am not competent to answer that question.

REDIRECT EXAMINATION BY MR. FELIX:

Q What period of time would a graduate of the high school and of the intermediate schools of the City of Manila require to acquire the knowledge necessary to keep a complex set of books such as you mentioned before?

MR. GIBBS: I object to the question on the ground that the witness has already admitted that he is not competent to answer it, and on the further ground that the question is wholly immaterial, the question before the court at present being whether there are sufficient bookkeepers already educated for the purpose of keeping the books of the Chinese merchants of the Philippine Islands in the event of the enforcement of Act No. 2972.

MR. FELIX: The question is self-explanatory.

A It takes two years to get a certificate as a bookkeeper after the completion of the seventh grade.

Q My question is not as to what period of study would be necessary in order to obtain a certificate as a bookkeeper; my question is, what period of time would a graduate of the high school or of the intermediate schools of Manila need in order to acquire the necessary knowledge to keep a complex system of books?

Q The other day Mr. Gibbs also, in cross-examining Mr. Fabella, attempted to establish a comparison between what is taught in the Northwestern University School of Commerce and the Jose Rizal College. Now, then, have you with you any pamphlet or catalog which sets forth the course of study given in Northwestern University?

A Yes, sir, I have a catalog. (The witness producing a catalog, which was marked for identification as Exhibit 9—K.)

There being no further question, the witness was excused, and withdrew.

The hearing was then, at 4:50 o'clock p. m., continued until Tuesday, November 27, 1923, at 3:00 o'clock p. m.

Tuesday, November 27, 1923.

The hearing was resumed at 3:00 o'clock, p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Domingo Dikit, a witnes scalled on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q Please state your name.
A Domingo Dikit.
Q Your age?
A 36 years.
Q Are you married or single?
A Married.
Q Your occupation?
A Chief of the Provincial and Municipal Department of the Auditor's Office, and Secretary-Treasurer of the Board of Accountancy of the Philippine Islands.
Q Where do you live?
A At 310 Calle Bambang, Manila.
Q Apart from those occupations, are you a certified public accountant?
A Yes, sir.
Q How long has it been that you have been discharging the duties of Chief of the Provincial and Municipal Department of the Insular Auditor's Office?
A Five years.
Q What are your duties in connection with that office?
A I have supervision of the provincial and municipal accounts.
Q Have you passed the government examination as a bookkeeper?

A Yes, sir.

Q Have you ever been a district auditor?

A Yes, sir.

Q Of what district?

A In the Second District.

Q What provinces does that district comprise?

A Ilocos Norte, Ilocos Sur, Abra, the Mountain Province, and the City of Baguio.

Q As such district auditor of the Second District, did you have any relations with the municipal treasurers of the provinces comprised in your district?

A Yes, sir.

Q What were those relations?

A It was my duty to go over their accounts.

Q When did you discharge those duties of district auditor of the Second District?

A In 1916 and 1917.

Q How were the accounts of the municipalities kept in your district at the time when you took over the duties of district auditor of this district?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence, and on the further ground that it is impertinent and immaterial.

A They carried them in single-entry form.

Q What did you do then?

A I changed over from that system to the double-entry system.

Q To the modern system?

A Yes, sir, the modern system.

Q Did you have any difficulty in making the municipal treasurers employ the modern double-entry system in their books of account?

MR. GIBBS: I object to that question on the ground that it is wholly impertinent.

A No, sir.

Q From that position of auditor of the Second District, to what government position did you go?

A To the position which I occupy at present, which is that of Chief of the Provincial and Municipal Division of the Insular Auditor's Office.

Q And when you took over that position, what did you do with relation to the system of bookeeping employed by the municipalities and provinces in the Philippine Islands?

MR. GIBBS: I object to the question on the ground that it is wholly impertinent.

A As it had been my experience in the course of my activities as district auditor that there was no difficulty in adopting the double-entry system, I immediately installed the double-entry system in all the municipalities of the Philippine Islands.

Q And was it possible to follow that system of double-entry in keeping the accounts of all the municipalities of the Philippine Islands?

A Yes, sir.

Q Did you encounter any difficulty in establishing that system of double-entry?

A No, sir.

Q The municipal treasurers in charge of the books of account of the municipalities in your district in Ilocos Sur, Ilocos Norte, the Mountain Province and Abra—were they all bookkeepers?

A No, sir.

Q Do you know whether those municipal treasurers had studied bookkeeping?

MR. GIBBS: I object to the question on the ground that it is impertinent. The fact that the provincial governments kept their accounts in a negligent and incompetent manner is not a reason why the Chinese should be compelled to conduct their businesses in the same manner.

MR. FELIX: The object of that question is to demonstrate that although the municipal treasurers were not bookkeepers, they were able to keep the books of account of the government.

A So far as I know, they did not know bookkeeping.

Q Were the books properly kept?

MR. GIBBS: I object to the question on the ground that it calls for a conclusion of the witness and that it clas for evidence which the petitioners have no means of contradicting.

A Yes, sir.

Q Do you know whether or not there exists in Manila an excess of bookkeepers?

MR. GIBBS: I object to the question on the ground that it calls, not for a statement of fact, but for a conclusion of the witness, without any foundation for such a question having been laid.

MR. FELIX: The witness has shown himself qualified to testify on that point, in view of the many positions connected with bookkeeping which he has held, and we are not asking for a conclusion, but for a statement of fact, which is whether or not there is an excess of bookkeepers.

A I believe there is an excess of bookkeepers.

Q Have you passed the examination in second grade English in the government civil service?

A Yes, sir.

Q Do you know whether the knowledge that is necessary to pass the second grade examination in English in the civil service is sufficient to enable one to keep the books of account of an establishment of the size of one of those in Calle Rosario, Manila?

A Yes, sir.

Q What do you mean to say by "Yes, sir?"

A That those who have passed the second grade examination in English can keep a single-entry set of books such as is required, for example in those establishments in Calle Rosario.

Q Which is the harder to keep, the books of account of a municipality or the books of account which a tienda of the size of a tienda in Calle Rosario would need?

A The municipal bookkeeping which we have is quite difficult and complicated.

Q Which is the most difficult to keep, the books of account of a municipality, or the books of account of a tienda such as those in Calle Rosario, taking into account the size of the business?

A I believe the bookkeeping of a municipality.

Q Do you know what examination is required as a prerequisite to becoming a municipal treasurer—what examination in the civil service?

A Yes, sir.

Q What examination?

A There is a regular municipal treasurer's examination.

CROSS-EXAMINATION BY MR. GIBBS:

Q What education have you had outside of bookkeeping?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A I almost finished high school.

Q At what age did you finish your education in high school.

MR. FELIX: I object to the question on the ground that it is wholly immaterial and impertinent to the case at issue.

A I did not finish high school; I didn't say I finished high school.

Q Well, at what age did you quit high school?

MR. FELIX: I make the same objection.

A I don't remember very well, but I believe I was about 20 years old.

Q Then to what occupation did you devote yourself?

MR. FELIX: I wish it understood that my objection extends to this whole line of questioning.

A I was at first a teacher for some eight months, and from that time up to the present I have devoted myself to accounting.

Q What education did you receive in accounting?

A A commercial education.

Q Have you had any education in a commercial school?

A Yes, sir.

Q What school?

A In the College of Elizabethtown, Pennsylvania, United States of America.

Q Then you are a product of the United States?

A Almost, you might say.

Q How many years did you spend in the United States?
A Four years.
Q What did you do during your stay in the United States?
A I was studying most of the time.
Q You studied all of the time?
A Most of the time.
Q And during all this time, did you devote yourself to the study of accounting?
A I gave half of my time to preparing for high school, and afterward in studying the commercial course.
Q And at what age did you return to the Philippine Islands?
A I believe I was 21 years old.
Q Twenty-one years?
A Yes, I believe so.
Q What did you do after your return to the Phillipine Islands?
A I taught as a teacher.
Q What did you teach?
A In the public school.
Q What course?
A The intermediate course.
Q What studies?
A Arithmetic, penmanship, grammar and spelling.
Q At what age did you quit teaching in the schools?
A I only taught for a short time, some eight months.
Q What age were you when you quit teaching in the schools?
A Twenty-one years.
Q Then to what did you devote yourself?
A To accounting.
Q In what capacity?

A When I resigned as a teacher, I was employed as a clerk for the disrtict auditor for 2 years; for 2 years also I was employed as the bookkeeper for the provincial treasurer of Sorsogon; I served a third year as bookeeper, and I assumed the position of chiêf bookkeeper in the Bureau of Audits, in the provincial division, and after that I was transferred as district auditor, and then as chief of the division, the position I now occupy.

Q Then you have never kept the books of account of any merchant?

A Well, it is a long time and I have engaged in many things, and I will have to refresh my memory—I have audited commercial accounts, but I haven't kept them myself.

Q When and where?

A When I was district auditor in Baguio, the books of the Hotel Pines.

Q Whose books did you audit?

A The Hotel Pines.

Q Do you call the Hotel Pines a mercantile establishment? Is that according to your lessons in accounting in the United States?

A It is one of the comercial accountings.

Q On whose account did you audit the books of the Hotel Pines?

A For the receiver, Mr. A. D. Williams, who is now chief irrigation engineer of the Bureau of Public Works.

Q When was that?

A If I am not mistaken, it must have been in the early part of 1917.

Q Who was your chief at that time?

A I was district auditor at the time.

Q Did you have permision to do work outside of government work at that time?

A I didn't seek the work; I was ordered by the court to do it.

Q By what court?

A The court of first instance in Baguio.

Q Did you ever examine or audit or keep the books of account of any other establishment outside of that one instance of auditing the books of that Hotel Pines?

A I audited the accounts of the Manila Hotel.

Q When was that?

A During the stay here of the Wood-Forbes Mission.

Q Did you ever keep or audit any books of account of any merchant?

A A private merchant, no.

Q Any public merchant?

A We call this a trading system—some public enterprises that we have in the government—some sort of trading systems whose accounts are similar to commercial accounting; in fact, the accounting system for the trading system has been based upon commercial accounting.

Q What books of trading systems have you kept?

A. I didn't keep them; I just devised the system for them.

Q If you have never examined the books of account of any merchant, how are you able to state that the keeping of municipal books is more difficult than the keeping of the books of account of a merchant?

MR. FELIX: I object to the question on the ground that it is based upon an erroneous assumption, and I base my objection on the fact that both the Hotel Pines and the Manila Hotel are commercial establishments.

A As I have stated before, inasmuch as I have installed accounting systems for municipalities, and as I have devised the system of accounting for the trading system, whose accounts are similar to commercial accounts, and as I have audited the accounts of the Manila Hotel, and the Hotel Pines, I could tell that the accounting system of the municipalities was more difficult than the ordinary commercial accounting system of a small-sized concern.

Q Have you ever examined or even seen any of the books of account kept by the merchants on Calle Rosario?

A No, sir.

Q Have you the slightest idea of the extent of the business of the merchants who have their tiendas on Calle Rosario?

A I have.

Q How did you obtain that?

A Based upon similar enterprises which we have in the government, such as the trading system.

Q If you have never seen any of the books of account and know nothing about the extent of the business of the tienda keepers on Calle Rosario, how are you able to compare their business or their system with the trading system you say you installed for the government?

A Because by looking at the size of the business carried on in Calle Rosario and looking at the business carried on by the trading system of the government, I was able to tell.

Q Well, have you looked at and examined the extent of the business of any of the stores operated on Calle Rosario?

A No, sir.

Q Then, how do you explain your previous answer, that you compared one with the other? How can you compare one thing with another without ever having seen one of the things?

A By comparing the size of the business.

Q How can you compare the size of the business without ever having learned its size?

A By looking at it.

Q When did you look at any of the stores on Calle Rosario?

A I pass there almost every day.

Q Pass along in a carromata or an automobile?

A Walking.

Q Walking?

A Yes, I go by there.

Q Have you ever made any inventory of any of their stocks of goods?

A No, sir.

Q And you don't know whether they are wholesalers or retailers, do you?

A Some of them I know are retailers, because I purchased there at retail.

Q Do you know whether any of them are wholesalers or not?

A Yes, sir.

Q How do you know it?

A Because they wouldn't sell you at retail.

Q Do you have any notion of the extent of the business of those wholesale establishment, without ever having examined their books?

A It depends upon the things that you can see inside.

Q You think that you can judge of the extent of a man's business without looking at his books, don't you?

A Well, not exactly; I am just talking for the purpose of comparison, but I cannot, of course, make an exact comparison without seeing the books of account.

Q What books of account did you devise for the trading system of the provinces?

A We have a journal, a cash book, a purchase book, and a sales book; then we have a permanent inventory system, and ledgers.

Q More than one ledger for each establishment?

A Well, we have some sort of loose-leaf ledger that can contain every account there.

Q Is that all?

A Yes, sir.

Q Tell the commissioner in what respect that system that you devised is more difficult than the system of bookkeeping carried on by the mercantile establishments of which you have no knowledge.

MR. FELIX: I object to the question on the ground that it assumes a fact which does not appear in the record, namely, that the witness has stated that the system of bookkeeping kept by the government is more difficult than the system of bookkeeping kept by mercantile establishments. What the witness said is that the system of accounting of the government is more complicated than the system of bookkeeping kept by those tiendas on Calle Rosario.

MR. GIBBS: If the witness wants to withdraw his testimony, let him do it; don't do it for him.

MR. FELIX: The witness does not want to withdraw his

testimony, and I do not withdraw it for him. I am merely referring to the facts as given.

A I don't think I said that the accounting of the trading system is more difficult than commercial accounting, on the contrary, I have stated that the trading system accounting is similar to commercial accounting. What is difficult is the government municipal accounting, not the trading system.

Q If you said anything of that sort in your previous testimony, you withdraw it, do you?

MR. FELIX: I object to the question on the ground that it is wholly improper.

Q Do you or don't you?

A If it refers to the trading system, I withdraw it, because I didn't say that.

Q That is much simpler, nowithstanding the fact that you devised it and installed it, than the ordinary system of commercial bookkeeping, is it?

A Are you talking about the trading system accounting?

Q Yes, the trading system.

A I didn't say it is simpler, either; I was trying to say that the trading system accounting was devised along the same lines as commercial accounting.

Q Notwithstanding the fact that you have never seen a set of books of an ordinary merchant?

MR. FELX: I object to the question on the ground that it is based on an erroneous assumption; he said that he saw the books of the Hotel Pines and the Manila Hotel, which are commercial establishments.

MR. GIBBS: They are not ordinary merchants, at least—they are not merchants of any kind.

A Yes.

Q You have never seen the books of any merchant except as you see fit to call the Hotel Pines and the Manila Hotel merchants, have you?

A Actually, no, but I learned that from the books, because in the books you get a whole set of instructions how to run different kinds of business.

Q Will you be kind enough to answer my question correctly and clearly: have you ever seen a set of books of any merchant outside of the Manila Hotel and the Hotel Pines?

A Well, I would like to clear up the situation, because, as to seeing one, I have seen many, but I have not seen the system. I have seen the books of an ordinary merchant—it is very easy; for example, you go anywhere among them and you will see the books,

Q But you never have looked inside of them?

A That's it, no, I haven't looked inside of them.

Q Now, what books does the municipal government keep?

A They have a journal.

Q Is there anything difficult or complicated about that?

A The name of the journal is not difficult, but to work on it, it is difficult for a man who doesn't understand it.

Q It is difficult for a man to work on anything that he doesn't understand, ins't it?

A Certainly.

Q Did you learn that from the United States?

A I learned it from you, because you asked that question, because you asked if there was anything difficult about the journal.

Q That's the first time it ever occurred to you?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A No, many times.

Q Is that journal kept in single entry or double-entry?

A Double entry.

Q Go ahead with the other books that the government keeps.

A The cash book, the ledgers, and the property cards—supplies cards.

Q Those property cards are especially complicated and difficult, are they not?

A Quite so, yes, the supplies cards.

Q Is that the special dificulty that exceeds the difficulties of keeping the books of ordinary merchants?

A No, sir.

Q All right, let's have the special complication and difficulties of keeping the government's books.

A Now, in the municipal government, we prepare the annual budgets; those annual budgets show the estimated income and the estimated expenditures of the government. This estimated income is distributed among the different classifications of revenues, and each classification of revenue is designated by a schedule, and the same way with the government expenditures: the estimated expenses, they are designated by certain functional classifications, and they are entered on the books of account. As the months go by, you have to diminish the estimated income as you collect particular revenues, and at the same time you have to diminish a certain expense as you incur it, and you show a balance; that balance also will tell you how much revenue you collected from each par-

ticular kind of revenue, and how much you expect to collect. It will also show you the different proportions,—how much has been spent, how much has not been spent, and how much you spent over and above the estimated expenditure.

Q That is terribly difficult, is it?

A For those who don't know, it is quite difficult.

Q But it is very easy for people to understand it?

A For people to understand it, it is easy.

Q What higher mathematics do you have to resort to in making these wonderfully complicated calculations?

A Just the same as any other—

Q Just ordinary arithmetic—multiplication, addition and subtraction?

A It depends upon the transaction.

Q Is there anything else than just the rudiments of arithmetic involved in these calculations?

A Yes, sometimes it involves percentage, interest—for example, the government wants to pay interest on certain debts sometimes—

Q One of the things you had in mind when you spoke of the greater difficulties of keeping the books of municipalities than keeping the books of a merchant was the calculation of percentages and interset, was it?

A No, the system.

Q Oh, just the system?

A Yes, the system.

Q Do they use that system at all in the keeping of ordinary books of account of merchants?

A The one that we devised for municipalities, no, they don't use that.

Q That is a system that is unknown to the ordinary accountant, is it?

A Not unknown; it is along the same lines as commercial accounting, because it is double-entry?

Q Was that devised by your own fertile brain, that special system of keeping the books of municipalities?

A It followed certain—

Q How did you learn it—from some of your chiefs?

A We learned that from some of the books already in existence in the Bureau of Audits.

Q There was nothing originated by you in that?

A Some, but not all of it.

Q What particular part of it was originated by your own fertile brain?

A I can't remember now.

Q You can't remember?

A I cannot.

Q It must have been some very important part of the system that you orginated in your own brain, in view of the fact that you can't remember it.

MR. FELIX: I object to the question, on the ground that questions should not be directed to a witness that make it appear that he is being ridiculed. The witness is entitled to receive better treatment at the hands of our opponents, and I invoke that right.

Q Does it require any special training and education to keep municipal books as distinguished from the books of an ordinary merchant?

A Yes, sir.

Q How many years?

A In fact, I used to lecture in one of the colleges here on the government accounting system.

Q What college?

A The Jose Rizal College.

Q How long did you lecture in that college?

A I lectured there for one year.

Q During what year of your business career was that?

A Last year. I just stopped after I was appointed Secretary-Treasurer of the Board of Accountancy because the Secretary of Commerce forbade my teaching and said it would be incompatible with my duties as Secretary-Treasurer of the Board of Accountancy.

Q You haven't answered that previous: how many years of education are necessary to prepare one to keep the books of a municipality?

A It depends entirely upon the ability of the man.

Q Well, speaking of a man of ordinary ability, like yourself, for example.

A If the system can be given proper supervision and the man has an ordinary education, I think within one or two months he should be able to handle the system nicely.

Q That is to say that to prepare oneself for the very great complications of bookkeeping for municipalities, it is necessary to spend a month or two of preparation?

A According to the supervision given.

Q A man of ordinary intelligence only needs a month or two of preparation to keep the most complicated books; is that true?

A The books of the municipalities, yes.

Q Well, are the books of municipalities a very complicated class of books?

A As I have already stated to you wherein the complication lies—

Q Wherein they are more complicated and more difficult than the books of account of commercial establishments?

A I think so; that is, ordinary commercial establishments.

Q And therefore, in your opinion, due to these extraordinary complications of the bookkeeping of municipalities an accountant ought to have a month or two of preparation?

A Yes, to do the work, but the work should be done under proper supervision of a man who understands the system thoroughly.

Q In other words, a man, to keep the books of a municipality, only needs to be an intermediate graduate with no training whatever in bookkeeping, other than the month or two that you speak of; is that correct?

A Well, it depends entirely upon the man; I can't answer that categorically.

Q Well, ordinarily it is not necessary for a man to have any schooling in accounting and bookkeeping at all before he begins to keep books, is it? All he needs is to be a graduate of an intermediate school or of a high school—that's all that is necessary?

A It can be done, but the man who would handle the work would need to understand the secret of the system of accounting or learn the work superficially.

Q You think, notwithstanding the opinions of all the experts who have testified heretofore here to the contrary, that it is not necessary for a bookkeeper or accountant to have any special training at all in order to perform his duties in a competent manner?

A It depends upon the work of the accountant. If it is only ordinary bookkeeping work, an intermediate graduate can be trained easily to keep the books, but he doesn't need to be an accountant.

Q What, in your opinion, is the necessity for all those

commercial schools where they teach bookkeeping and accounting if it is not necessary in order to prepare one to keep books correctly.

A To teach a man the art of bookkeeping is to prepare him for more difficult accounting problems to be solved, and in that way he is prepared to handle a bigger-sized business.

Q How extensive a business, in your opinion, can a graduate of an intermediate school handle, so far as the bookkeeping department is concerned, without any previous preparation in bookkeeping?

A It will depend upon the nature of the establishment, because there are merchants who have different ways of keeping books. If he wants to keep more scientific accounting, of course a better preparation in bookkeeping must be obtained.

Q If you never looked inside of any of the books of these merchants, how are you able to make this statement so glibly about their different methods of keeping books?

A Because they are learned from the books.

Q All you know about it is from what reading you have done on the subject of bookkeeping; is that true?

A Not only that; I have been a bookkeeper in the government myself, so I both studied and experienced it actually.

Q You think, don't you, that the time you spent in the United States learning bookkeeping and accounting was all thrown away—you could have done just as well without ever having taken that education, could you not?

A No, sir, I am very proud of what I have learned,

A I think so; that is, ordinary commercial establishments.

Q And therefore, in your opinion, due to these extraordinary complications of the bookkeeping of municipalities an accountant ought to have a month or two of preparation?

A Yes, to do the work, but the work should be done under proper supervision of a man who understands the system thoroughly.

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Q You think, don't you, that the time you spent in the United States learning bookkeeping and accounting was all thrown away—you could have done just as well without ever having taken that education, could you not?

A No, sir, I am very proud of what I have learned,

otherwise I would not be occupying my position today.

Q You say there is an excess of bookkeepers in Manila, do you?

A I believe so, from my own personal opinion.

Q Did you learn that while you were walking on the street or riding in an automobile?

A No, sir, I learned that in the office.

Q What office?

A As Chief of the Department of Provincial and Municipal Audits.

Q In your opinion, there are about ten thousand unemployed bookkeepers in the Philippine Islands competent to take charge of the book of merchants?

A No, I don't think it would reach that much.

Q You don't?

A I have no idea as to the exact number. I judge only my opinion, because so many applicants come to me who are bookkeepers, but I couldn't give them employment as such.

Q Now we are getting down to it: you have a good memory, have you not?

A Pretty fair.

Q Give us the names of all the unemployed bookkeepers that you know in the Philippine Islands.

MR. FELIX: I object to the question on the ground that it is based upon an assumption not established in the record, which is that he knows all the bookkeepers who are unemployed in the Philippine Islands.

A I couldn't give them, because the persons who come to me, they are entirely not known to me; they ask

for a position, and it is not my duty to know their faces nor to remember their names.

Q Don't they present cards, or introduce themselves?

A Sometimes.

Q How long have you lived in the City of Manila?

A I have been living here about ten to twelve years.

Q You know a reasonable number of young men in the Islands and in the City of Manila?

A I don't quite understand the question.

(The question was then repeated.)

A Young men, yes.

Q Well, naturally, being an expert bookkeeper, your acquaintances are particularly among the men of your own profession, are they not?

A Not necessarily of my own profession.

Q You don't know many other bookkeepers?

A Well, in fact, you know, I don't remember their names. They just come here, you know, and by reference they say the Bureau of Audits needs men of this type who understand accounting and who are graduated bookkeepers. All right, they come there if I have a place for them and they are qualified, I give it to them; if not, "Take your hat and go"—but it is not my duty to take their names down or to know them.

Q Do you know the name and address of a single unemployed competent bookkeeper in the Philippine Islands?

A A competent bookkeeper?

Q Yes.

A Unemployed as what? As such bookkeeper?

Q Unemployed.

A As such bookkeeper?

MR. FELIX: He might be employed in some other capacity.

Q Unemployed; that means "No empleado."

A No, I can't remember whether they are now employed or not.

Q You can't remember a single name or a single address of an unemployed competent bookkeeper in the Philippine Islands, and you have already studied five minutes on the subject?

MR. FELIX: I object to the last statement and ask that it be stricken from the record, because not even one minute has gone by.

MR. GIBBS: Your watch has stopped.

A I can mention to you the name of one who just wrote me a letter and who is in Davao, asking for a place because he is unemployed.

Q Is he a Moro?

A No, he is a Christian.

Q You don't know him, do you?

A I know him.

Q Did you ever meet him or see him.

A Yes, sir, I have met him.

Q What is his name?

A I know him by his last name, Yambao.

Q Is he employed in Davao at the present time?

A According to his letter, he is not employed.

Q How do you know he is a competent bookkeeper?

A Because he qualified in the English senior bookkeeper's examination in the civil service.

Q He was examined here, was he?

A Yes, sir.

Q He would like to come back to the City of Manila, would he?

A I presume so.

Q He didn't say there wasn't any work down in Davao, did he?

A He did.

Q He said they didn't have any use for bookkeepers down there?

A Well, he didn't say there is no use for bookkeepers; he said he is unemployed and he needs help.

Q Well, that's the limit of your knowledge of the supply of bookkeepers on hand in the Philippine Islands to keep the books of about fifteen thousand Chinese merchants, is it?

A Well, as I have told before, I couldn't remember their names.

Q And you wouldn't know where to find them, would you?

A Not all of them, possibly; possibly I could find some of them.

Q Do you know where to find any one of them?

A Well, I told you one already: Davao.

Q I mean outside of that one; let's get a little nearer home.

A Nearer home?

Q Yes.

A I couldn't remember the names at present, there are so many of them.

Q And you can't remember the addresses—let's be frank with each other—you don't know who they are nor where they are?

A If you don't know their names, it is worse to know their address—you wouldn't know their address.

Q And yet you are prepared to tell the Supreme Court under oath that there is an excess of unemployed bookkeepers in the Philippine Islands?

MR. FELIX: I object to the question on the ground that that statement is not necessarily a proper conclusion from the answers of the witness.

A As I have stated before, I judge my opinion from the applicants who are qualified as bookkeepers and who represented to me that they could not find employment as such bookkeepers.

Q How many such applications have been made to you?

A Well, I can't give you how many, because I am basing my statement from my knowledge since I have actually occupied the position as Chief of the Provincial and Municipal Department.

Q And how many years ago was the last application made to you?

A Well, this year some applied.

Q How many this year?

A As far as I can remember, I think about ten.

Q Did you know any of them at all?

A I know, but employees—clerks in the Bureau of Agriculture.

Q They were already employed, were they?

A As clerks, yes.

Q Then they were not unemployed bookkeepers?

A They are unemployed bookkeepers, because their employment is not as bookkeeper but as clerk, so they can be considered as unemployed bookkeepers.

Q Who are these ten unemployed bookkeepers, but employed clerks?

A One I remember is in the Bureau of Agriculture by the name of—I think his name is Conrado; I think he is in the Publication Division.

Q He is not satisfied with his job?

A As bookkeeper, he has not found a job.

Q What salary does he receive in his present position?

A If I am not mistaken, I think he mentioned to me that he is receiving P60.00 a month as clerk.

Q And how much did he receive as bookkeeper?

A It depends upon the work.

Q In referring to municipal bookkeeping, did you include in that the bookkeeping of the municipal treasurer's office?

A Well, that's what it is.

Q And that was the particular bookkeeping that required special preparation, was it, and which enabled you to lecture in the Jose Rizal College on account of your special ability in that line?

A Yes.

Q And the extent of special preparation required for that extremely complicated system was a month or two?

A It depends upon the supervision given to the man, because the system, even though it is complicated, in the provinces you have there district auditors and provincial treasurers who are charged with the duty of supervising the work of the municipal treasurers, and if the municipal treasurer has an ordinary education, there will be no difficulty for him to handle the system, in view of the fact that these two officials and their deputies go to the municipalities almost every week to see how he is doing in the work.

Q Are you still the auditor of the Second District?

A No, sir.

Q How much salary did you receive in that important position?

A At that time?

Q No, at this time.

A I am chief now.

Q I naturally refer to the time when you occupied that position, not after you quit it: how much salary did you get while you occupied that important position of auditor of the Second District?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A ₱233.00 per month.

Q And what is your present salary?

MR. FELIX: I make the same objection to the question, that it is wholly immaterial.

A ₱5,500.00 per annum.

Q How long have you held your present job?

A About five years.

Q When was it that you were auditor of the Second District?

A In 1916 and 1917.

There being no further questions, the witness was excused, and withdrew.

The hearing was then, at 4:30 o'clock p. m., continued until Monday, December 3, 1923, at 3:00 o'clock p. m.

Monday, December 3, 1923.

The hearing was continued at 3:00 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

L. M. Heras, a witness called on behalf of the respondents, was sworn and testified as follows:

FNB

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TRANSCRIPT OF RECORD

Supreme Court of the United States

October Term

No. 623

271
39

1 Cong Eng and Co Liam,

vs.

W. Trinidad

DIRECT EXAMINATION BY MR. FELIX:

Q State your name, residence and occupation.

A L. M. Heras, married, 59 years of age, merchant and land owner, living at 708 Calle Escaldo, Manila.

Q Mr. Heras, you say you are a merchant; how long have you been a merchant and what experience have you had as a merchant?

A Since my very early years, when I began to work for business houses, beginning as an apprentice in the Chartered Bank; then I was employed in a German importing firm in the capacity of customs agent at first, and afterward I was an assistant salesman of articles imported from Germany, and afterward I was made salesman. After that, I was employed in a tobacco factory for many years; after that I was manager of the Germinal Tobacco Factory; then I was in charge of the office of Teodoro Yangco; and at present I am engaged in business on my own account, buying and selling the products of the country and having a steamer under charter.

Q Are you associated in any manner with any mercantile firm or house?

A No, sir, no more than in my own business. Now, I forgot to mention that I am at present the vice president of the Compania Maritima, the vice president of the Varadero de Manila, and vice president of the Johnson-Pickett Rope Company.

Q What are you in the Chamber of Commerce of the Philippine Islands?

A At present I am its president.

Q As a merchant, and during the various periods of your

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employment in commercial houses, have you had opportunity to maintain commercial relations with the Chinese merchants?

A Yes, sir.

Q In view of your relations with the Chinese merchants, can you say what books of account would be necessary to carry on their business properly—such business houses, for example, as the tiendas on Calle Rosario and others of that kind?

MR. GIBBS: I object to the question for the reason that no foundation has been laid for it, the witness not being a bookkeeper and not having shown himself to be qualified to answer the question.

A That naturally depends upon the man who is managing the business. If it is for the purpose of showing the business that he is doing, I presume that he should keep his books the same as all of us keep them. Now in certain businesses of great volume, naturally the bookkeeping is somewhat more complicated, but, on the other hand, in small business, the bookkeeping is much simpler.

Q My question was, Mr. Heras, what books of account would be necessary to keep properly the accounts of business houses such as the tiendas on Calle Rosario?

MR. GIBBS: I object to the question on the ground that it has already been fully answered.

A If they are tiendas such as those textile shops, I believe it would be necessary to have a book of purchases, a book of sales, and a cash book.

Q With those books, could they always keep up with their business?

A I believe so.

Q What is the extent of your business, Mr. Heras?

A Extent in what sense?

Q I refer to the size of your business.

A I conduct a business of purchasing and selling copra, rice gasoline, and petroleum.

Q And the ship?

A That is under charter.

Q Where does this ship make its voyages?

A It goes to the Visayas—to Romblon, Calivo, and Capiz.

Q Does this ship receive both passengers and freight?

A Yes, sir.

Q Do you require the services of a bookkeeper constantly for your business?

MR. GIBBS: I object to the question on the ground that it is wholly immaterial and incompetent.

A For my business as such, no, sir. I have a bookkeeper who comes there one or two days a week for a half hour or an hour, and in that way I keep my books.

Q Do you know whether he keeps your books properly?

A Yes, sir.

Q Are they or are they not properly kept?

A Yes, sir, they are properly kept. I say they are properly kept, because at various times representatives of the Bureau of Internal Revenue have come there to inspect them, and I believe they are properly kept inasmuch as they have made no remark about them.

Q For the purposes of your business, do you know whether your books are properly kept, notwithstanding the fact that they are not kept by a permanent bookkeeper?

A Yes, sir.

Q As a result of your experience in business, can you say

whether the Chinese merchants in general speak Spanish and Tagalog freely?

MR. GIBBS: I object to that question on the ground that the witness is not qualified to testify on that subject, and on the further ground that it is immaterial.

A In general, most of them speak Spanish and the dialects of the country. A good many of them—quite a number of them—also speak English—not correctly, of course, not as correctly as an Englishman, a Spaniard or Tagalog, but sufficiently well to make themselves understood for the purposes of their business.

Q As a salesman, or as an employee of the sales department of that German house, what were your duties, if any, so far as concerned business with the Chinese merchants?

A The Chinese use to come to our office to give their orders. Those orders were calculated, and if it was possible to bring in the goods at the prices that they stipulated, that is, if according to our calculations the prices were sufficient to cover cost, customs duties, etc., then the order was sent in. When the order arrived, the Chinaman was notified and he came in, and the goods were delivered to him. Some of them paid cash for the goods, and in other cases they gave notes for three or six months depending upon the circumstances. Now, in some cases, we would receive articles for which there was a great demand at the moment, and they had no objection to paying for them in cash. That was the manner in which we carried on business at that time.

CROSS-EXAMINATION BY MR. GIBBS:

Q Do you speak English, Mr. Heras?

A Very, very little.

Q You don't mean to say that the Chinese merchant is not under the same necessity of keeping books of account that any other merchant is, do you?

A I assume that he must have, for the simple reason that a merchant should keep books in order to know whether or not he is doing business.

Q And in order that a merchant may exhibit the financial condition of his business, is it not necessary that he keep a complete set of books of account?

A I have stated before that that depends upon he importance of the business. A large business naturally is more complicated than a small business, and if it is a large business, it requires the ability of a competent bookkeeper, that if it is a small business a man who has a notion of the four elements of arithmetic I think within a very short time can take charge of a small set of books, because mainly all he has to show is, "I have purchased such and such goods for so much, I have sold them for so much," and naturally the difference is the profit, and it is so simple that a young man who has a knowledge of the four divisions of arithmetic can keep them within three or four months after the books are opened.

Q But in order to keep the books in English, Spanish or any local dialect, he would first have to know those languages—to read and write them—and then he would have to have some instruction in the manner in which the books should be kept, although they might be most simple; isn't that true?

A Yes, sir, but I have already explained that in my judgment it is so simple to keep the books that I would be willing to subject myself to a test, that is, if a young man came along who knew the four elements of arithmetic and I would show him how the entries are made in the books—what has been purchased and what has been sold—I am sure that that young man within a very short time could show, "We have purchased so much and have sold so much, and therefore we have a profit of so much." As I have said before the difficulty in keeping books depends upon the size of the business. I will give you an example: the Pacific Commercial Company, which has a very extensive business, requires a real bookkeeper in order to keep its books in a proper manner.

Q You are not a bookkeeper?

A I have studied it.

Q How long have you studied bookkeeping?

A If I remember correctly, three years.

Q And to what point in the science of bookkeeping did you arrive in three years?

A The little that I studied was the course which we were obliged to take by the Government here in the Nautical School, when I was taking the Nautical course.

Q According to your opinion, of what size should a business be in order that it should keep books of account?

A In my opinion, all business should keep books.

Q In order to keep up with the business, is it not necessary in all cases to have a ledger?

A It depends upon the size of the business.

Q Let us take, for example, a business with a stock of

P5,000: do you mean to say that such a business should not keep books of account?

A I have stated that all businesses should keep books in order that they may know whether they are making money or losing it in the business?

Q There is just as much necessity for a Chinese merchant to know whether he is making or losing money as there is for any other merchant; isn't that true?

A I believe so; he should know that.

Q And in order to keep up with up with the accounts which he maintains with his customers, and in order to know the state of his business, it is necessary for any merchant to keep a ledger; isn't that so?

A No, not in all cases.

Q How small would a business have to be in order that it might get along without a ledger?

A A ledger can be kept even though it is a very small business, if the merchant wants to keep one, but in my judgment it is not necessary.

Q What you mean to say when you state that it is not necessary is that a merchant could probably keep on conducting his business even though he didn't have a ledger?

A Yes, sir.

Q But you don't mean to say that it is not better for all merchants to keep a ledger?

A I don't understand the question very well.

(The question was then repeated.)

A If he can keep one, it would be better.

Q In other words, there is a very well known advantage in keeping a ledger in all businesses?

A No, sir, I have stated that I don't believe it is necessary.

Now, whether it is advantageous or disadvantageous, I don't know.

Q You haven't arrived at such a degree of knowledge of bookkeeping as to know whether it is advantageous in bookkeeping to keep a ledger or not?

A It depends on the judgment of the accountant.

Q And is it not advantageous and proper for all merchants to keep journals in their businesses?

A Journals should be kept in which to make the entries, especially if sales are made on credit, but if there are no sales on credit, in my judgment it is not necessary to keep journals.

Q But in all cases in which merchants sell on credit, it is very necessary to keep a journal; isn't that so?

A It is not exactly necessary, no, sir; a notebook would accomplish the same purpose as a journal. Now, in bookkeeping we give the books those names, day-book, journal and ledger and it is provided that in each book such and such entries shall be made.

Q But, in order that a merchant may know the state of his business with relation to any customer to whom he sells on credit, what book is almost indispensable?

A The book of current accounts.

Q Is it not almost indispensable that he have a ledger, in order that he may be able to ascertain immediately the state of the account?

A A book of current accounts—which is about the same thing as a ledger—is more or less sufficient to enable him to ascertain the condition of his business.

Q That is simply another name for a ledger?

A Yes, sir.

Q Is it equally difficult to keep it?

A Well, in the ledger everything is brought together.

Q But the book of current accounts is just as difficult to keep as a ledger?

A No, sir, it is in nowise difficult, because in the book of current accounts are entered the debits and credits of the person with whom you are carrying the account.

Q And what is the distinction between the book of current account and the ledger?

A The designation or name of the book.

Q And do you find it necessary to keep an inventory book?

A Yes, sir.

Q You, as a merchant, know that accounting is one of the most essential elements for the success of any business?

A Yes, sir.

Q And that without accounting no merchant can prosper unless it be as the result of an accident?

A Well, you have limited my answer so as to be as concise as possible, but I could explain to you that in former times there were many merchants here who hardly kept any books and who nevertheless were prosperous.

Q It is possible that they prospered notwithstanding the fact that they did not keep books?

A Yes, in the manner in which they are kept today.

Q But you naturally can't know how much they may have lost in their business, or how much they may have failed to make, through not having accounting?

A Without keeping the books, how can I know how much they lost or how much they made.

Q In short, Mr. Heras, you wouldn't advise any merchant,

no matter how small he might be, to limit his books of account?

A I don't understand what you mean by limiting.

Q If he were already keeping a ledger, a cash book, a journal and an inventory book, you wouldn't advise him to reduce the number of his books in order to improve his business?

A Of course not, but I stated to you before that it depends upon the kind of business that he has. In order to ascertain the condition of a small business, there is no necessity for keeping so many books.

Q That is to say, that a small merchant can continue to conduct his business with less books than a large merchant?

A Yes, sir, exactly.

Q Do you know anything of the extent of the business done by the tiendas in Calle Rosario?

A Are you referring to the volume of capital that they handle?

Q Yes.

A No, sir, there are small tiendas and large tiendas.

Q Do you know that the great majority of those tiendas on Calle Rosario conduct not only a retail business, but a wholsale business as well?

MR. FELIX: I object to the question on the ground that it is based upon a fact that has not been established in the record.

MR. GIBBS: It appears there now, if it didn't before, and it appears from the testimony of other witness also.

A Yes, there are merchants who do business in those tiendas at wholesale and retail at the same time.

Q And do you know that many of those merchants on Calle Rosario do business on a scale of from a hundred thousand to a million pesos per year?

MR. FELIX: I object to the question on the same ground as that just stated, that it is based upon something that does not appear in the record.

A I can't answer as to that, Mr. Gibbs, because I have no knowledge as to the merchants who do that amount of business.

Q But any merchant who does a business, whether of ten thousand or a millon pesos each year, should keep a complete set of books of account; isn't that so?

A I believe he should keep them.

Q This business in which you have to employ a bookkeeper merely for—how long a time did you say?

A It is not always the same; sometimes he is there a half hour or an hour.

Q Each day?

A No, once or twice a week.

Q So that the entries that this bookkeeper makes are very few?

A Yes, sir.

Q Of what do those entries consist which this bookkeeper makes?

A Of the transactions that I have had.

Q How many entries does he have to make each week?

A I can't say exactly, because some weeks there are more and some weeks there are less.

Q Are there sufficient entries to fill a page in a week?

A Yes, or possibly more.

Q But there is no comparison whatever between your business and the business of the smallest merchant when it comes to the question of the number of entries?

A To make that comparison, it is necessary to know how small the other merchant is in comparison with myself.

Q Well, a merchant who does a business, for example, of ten thousand pesos a year, has many more entries in his books of account than there are in yours?

A No, sir, because my business is much larger than that during a year.

Q But the extent or importance of your business does not indicate in any way that the entries are numerous?

A I can give you an idea—I can't state exactly, but my cash book shows the handling of from ₱40,000.00 to ₱80,000.00 a month, which indicates that it is something more than ₱10,000.00 a year, the figure which you mentioned before.

Q I am not speaking of the importance of the business; I am speaking of the number of entries.

A That is why I say—when I told you that the cash book shows a movement of ₱40,000.00 to ₱80,000.00 a month, you can calculate what the number of entries is.

Q What are the amounts, approximately of each one of your transactions that are shown in any one entry in your business?

A That depends upon the quantity. There might be an entry showing a sale of a case of petroleum, which cost ₱5.00, and there might be another entry showing a sale of four hundred sacks of copra, amounting to some ₱5,000.00, and the entry is the same.

Q But it is very seldom that you have an entry of less than ₱5.00?

A No, sir, in my cash book there are entries of ₱0.10.

Q Of what do they consist?

A If I send a muchacho on the street car, that entry is made in the cash book.

Q I am speaking principally of articles of merchandise sold.

A I understood you to mean the entries in the books.

Q You don't make sales in a smaller amount, for example, than P5.00?

A Yes, sir.

Q But very seldom?

A I can't state exactly the number of times, but I will give you an example: if someone comes in to buy a can of grease, which costs P2.40, that is a sale.

Q You have a stock of merchandise?

A Yes, sir, of different merchandise.

Q Do you keep an inventory book?

A Yes, sir.

Q Cash book?

A Yes, sir.

Q A journal?

A Yes, sir, and a ledger, and a book of current accounts, and a book of sales.

Q Then you keep a very complete set of books of account?

A Yes, sir.

Q Then what you have said about the necessity of keeping books of account in your business—didn't you say that it wasn't necessary—

A On the contrary, I said that all business should keep books in order to see if they are making money or losing it. That's what I said before—you can refer to the record.

Q But didn't you say that it was not necessary in your business to keep a complete set of books?

A No, sir.

Q Of what nationality is your bookkeeper?

A He is a Filipino.

Q You are a Spaniard?

A A Filipino. My father was a Spaniard, but born here; that is what we call here a Spanish-Filipino.

Q But born of Spanish parents?

A Yes, sir.

There being no further questions, the witness was excused, and withdrew.

Alfredo Leon Yatco, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name, age, residence, occupation, and personal circumstances.

A Alfredo Leon Yatco, thirty-seven years of age, married, chief clerk, Bureau of Internal Revenue, living at 730 Calle Pennsylvania, Malate.

Q As such chief clerk of the Bureau of Internal Revenue, have you in your charge the files of that office?

A Yes, sir, I have.

Q Showing you this document, which is marked for identification as Exhibit 10, and which is appended to the record, together with the report of Mr. Juan Posadas, dated July 11, 1923, I ask you if you recognize this document?

A Yes, sir, I recognize it.

Q Why do you recognize it?

A Because it refers to a circular which was issued during the time in which I was employed in the office of the Bureau of Internal Revenue, in the records division.

Q It is the original or a duplicate of this Exhibit and of this circular which was sent out to the Municipal Treasurer on the 3rd of February, 1913?

A A duplicate of this document should be in the files of the Bureau of Internal Revenue.

Q Do you know whether that circular was sent to the Municipal Treasurers?

A I believe so.

Q Showing you this other document, which is marked for identification as Exhibit 11, I ask you if you recognize it?

A Yes, sir, I recognize it.

Q Why do you recognize it?

A Because it refers to a form adopted by the Bureau of Internal Revenue in order to save the time of its agents in reporting to the Collector of Internal Revenue any infractions of the Internal Revenue law which they might discover in their inspections.

Q Do you know if this exhibit existed in the files of the Bureau of Internal Revenue?

A Yes, sir, this exhibit existed in the office of the Bureau of Internal Revenue.

Q Is this the original of the report filed by Agent John Ryder, assistant chief agent of the Bureau of Internal Revenue?

A Yes, sir, it is.

Q Do you know the signature of John Ryder?

A Yes, sir.

Q Is this the signature of John Ryder which appears at the foot of Exhibit 11?

A Yes, sir.

Q Did this document come into your hands as file clerk of the Bureau of Internal Revenue?

A Yes, sir.

Q Do you know whether, before this document came into your hands as file clerk of the Bureau of Internal Revenue, it went through the hands of the Collector of Internal Revenue?

A Yes, sir.

Q To whom is this letter addressed?

A It didn't come into the hands of the Collector of Internal Revenue, but into the hands of the chief of the law division, and as soon as he finished with it is was sent in for filing.

Q Showing you this other document, which for idetification is marked as Exhibit 12, composed of five pages and one pamphlet of twenty-seven pages, I ask you if you recognize it?

A Yes, sir, I recognize it, because in addition to the stamp of the office it bears my initials.

Q How did those documents which make up Exhibit 12 come into your hands?

A Because as chief clerk of the Bureau of Internal Revenue, all correspondence, both incoming and outgoing, goes through my hands.

Q Did you receive these documents in the ordinary course of your duties?

A Yes, sir.

Mr. Gibbs declined to cross-examine the witness.

There being no further questions, the witness was excused, and withdrew.

The hearing was then, at 4:50 o'clock p. m., continued until Wednesday, December 5, 1923, at 2:30 o'clock p. m.

Wednesday, December 5, 1923.

The hearing was resumed at 2:30 o'clock p. m., the com-

missioner, the attorneys for both parties, and the reporters being present.

Juan Posadas, Jr., a witness called on behalf of the respondents was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name, age residence, and ocupation.

A Juan Posadas, Jr., 38 years of age, Acting Collector of Internal Revenue, residing at 411 Calle Pennsylvania, Manila.

Q How long have you been the Acting Collector of Internal Revenue?

A Since the 7th of April, 1923.

Q Prior to that date, the 7th of April, 1923, what position did you occupy?

A Deputy Collector of Internal Revenue.

Q Since when had you occupied that position?

A Since the month of March, 1920.

Q Do you know whether the Bureau of Internal Revenue has at any time enforced the provisions of Act No. 2972, known as the Accounting Law, to any Chinese other than those prosecuted in Criminal Cases Nos. 25,550 and 25,551 of the Court of First Instance of the City of Manila, that is, Yu Cong Eng, Chang Hang Chiu, and Chang Bong Chong?

A No, sir, those were the only three that were prosecuted by the Bureau for violation of the Accounting Law.

Q Have you had any understanding with the Fiscal of the City of Manila with reference to the proceedings for violation of Act No. 2972?

MR. GIBBS: I object to the question on the ground that it is immaterial and is not binding on the petitioners.

A Yes, sir.

Q What was that understanding?

A That no other cases would be filed until the two cases already filed had been decided by the court and the constitionality of the law passed upon.

Q Why did you know that the constitionality of the law in question would be raised in these two cases?

MR. GIBBS: I object to the question on the ground that it is immaterial and incompetent and not binding on the petitioners.

A From an intimation received from one of the attorneys for Chang Bong Chong, who informed me of the fact in order that the office might proceed against his client for violation of the Accounting Law.

Q If the books of account, not only of the Chinese merchants, but of the other foreign merchants, were kept in their own languages and not in English, Spanish, or some local dialect, would it be possible to have the books of account of these merchants audited by the agents or employees of the Bureau of Internal Revenue?

MR. GIBBS: I object to the question on the ground that no foundation has been laid for its admission, the witness not having qualified himself to answer it, and it appearing from the evidence already adduced and being an admitted fact that up to the present time Act No. 2972 has not been enforced at all.

A It would be impossible, unless our office had a personnel sufficiently numerous and competent to make the audits of the books of account in the different languages in which they were kept.

Q Has the Bureau of Internal Revenue that sufficient and

competent personnel to audit the books of account of merchants who do not keep their books in Spanish, English or some local dialect?

A No, sir, we have only an insignificant number of Chinese accountants to make examinations of the books of the Chinese merchants.

Q And as to the books of account of the other merchants who do not keep their books in English, Spanish or some local dialect—the other merchants who are not Chinese?

A No, sir, we have not at present any personnel for that.

Q If the Bureau of Internal Revenue were not able—as according to you it is not able—to examine properly the books of accounts of merchants who do not keep their books in English, Spanish or some local dialect, and the case arose that those merchants who do not keep their books in the languages permitted by Act No. 2972 should pay the full amount of taxes due to the Internal Revenue, even though they were acting in good faith—could such a case occur?

MR. GIBBS: I object to the question on the ground that it is unintelligible and also leading.

A Yes, sir, because judging from the audits even of those books of account which are intelligible to the office personnel, the office has found many differences, or items not declared for the purpose of taxation.

Q In the case of banks, has it occurred at any time that they have had to pay taxes in excess of the amounts declared by them?

MR. GIBBS: I object to the question on the ground that it is immaterial, and for the further reason that the Collector of Internal Revenue has been ordered by the

Supreme Court to furnish to the petitioners record data of under-declarations and has not yet complied with that order, and he should not, therefore, be permitted to testify as to isolated cases which may suit the convenience of the respondents.

A Yes, sir.

Q Showing you this document, which is marked for identification "Exhibit D", I ask you if you recognize it.

A Yes, sir, that is a certificate signed by me.

Q Are the contents of this certificate true?

A According to the data on file in the office, yes.

Q Will you state what this expression "Additional Assessments" means, which is the heading of various columns of figures which appear in that Exhibit D?

A They are taxes, penalties and additional collections assessed by the office by reason of the omission of these amounts in the original tax returns filed or presented by taxpayers.

Q What do you mean by this entry, "Banks and Bankers?"

A This corresponds to the transactions subject to taxation which were declared by the banks upon filing their semiannual returns for the payment of taxes.

Q How were you able to discover those amounts which were omitted in the original returns?

A By examinations of the books of the banks and by comparing their returns with their books.

Q Books kept in what language or dialect?

A In English or Spanish.

Q Showing you this document, which is marked for identification as Exhibit 2 of the respondents, I ask you if you recognize it.

A Yes, sir.

Q How do you recognize it?

A Because it is another certificate signed by me.

Q Are the contents of that certificate true?

A Yes, sir, this certificate was prepared upon the basis of information received from our agents in the provinces.

Q Will you explain the meaning of each one of the headings on the various columns of that exhibit?

A The first column pertains to the provinces which have made returns to the office.

Q Provinces where?

A Of the Philippine Islands. The second coulmn shows the number of Chinese who keep only the sales book of the Bureau of Internal Revenue, and the third column the percentage that those merchants represent.

Q The percentage as compared with what?

A As compared with the total.

Q The total of what?

A Of the Chinese merchants in the provinces.

Q Very well; go ahead.

A The fourth column shows the number of Chinese who fifth column shows the percentage of the total numkeep books of account in Chinese, in addition to the sales book of the Bureau of Internal Revenue. The ber that they represent. The sixth column shows the number of Chinese who only keep books of account in Chinese. The seventh column shows the percentage of the total that they represent, and in the eighth column are remarks.

Q Do you know whether opportunity has been given to merchants in general to comply, or to equip themselves so as to be able to comply, with the provisions of Act No. 2972?

MR. GIBBS: I object to the question on the ground that it calls for a conclusion of the witness and not a statement of fact.

A Yes, sir, which is evidenced by the fact that the putting into effect of that law was postponed.

Q Showing you this document, which for identification has been marked as Exhibit 3, I ask you if you recognize it.

A Yes, sir.

Q How do you recognize it?

A Because it is a copy of records on file in my office.

Q Certified?

A Yes, certified by me.

Q Have you appeared at any time before the committees of the Legislature when the proposed law, which is now Act No. 2972, was being discussed?

A I remember having appeared on various occasions before the Senate Committee and the Committee of the House of Representatives after the Accounting Law had been adopted, when the Chinese petitioned for its repeal.

Q As a result of these appearances of yours before the committees of the Senate and of the Philippine Legislature, can you state to the commissioner what was the object of the author of the proposed law and of the Legislature in adopting Act No. 2972?

MR. GIBBS: I object to the question on the ground that it is an attempt to prove the purpose of the legislators by hearsay evidence and as calling for a conclusion of the witness as to the mental status of the authors of the law, and on the further ground that it is not the best evidence.

MR. FELIX: I wish to state in the record that in addition to

this question which I have put to the witness, we will submit the proposed law with its explanatory note, as well as the portions of the speeches of the members of the House of Representatives which were not submitted by the petitioners, for the purpose of completing Exhibit L.

MR. GIBBS: In reply to the statement of counsel, we wish to say that a promise to present competent proofs on any subject gives an attorney no right or license to present wholly incompetent proofs on the same subject.

A I believe the explanatory note to the proposed law clearly reflects the purpose of the Legislature in adopting the Accounting Law.

Q Can you state, Mr. Posadas, how the proposed law, Act No. 2972, would affect the uniformity of the assessment of taxes which the merchants should pay?

MR. GIBBS: I object to the question on the ground that it calls for a conclusion of the witness, and not for a statement of fact.

A For the ends of justice and equity in the assessment of taxes, it is very essential that it be uniform. While the Bureau at present can discover errors or omissions or differences which appear in the tax returns of taxpayers who keep their books in a language intelligible to the office, we cannot do the same so far as concerns other merchants who keep their books in other languages, in view of the fact that we have not the proper personnel for that work. We can only examine a small number of the books of account of the Chinese.

Q Showing you this document, which has been marked for identification as Exhibit 10, which is attached to a

document filed by you with this Supreme Court in connection with this case, dated July 11, 1923, I ask you if you recognize it.

A Yes, sir.

Q How do you recognize it?

A It is a copy, certified by me, of a circular issued by the Bureau on February 3, 1913.

Q Do you know if the contents of that Exhibit 10 are correct?

A Yes, sir, it is copied from the original.

Q Do you know whether that circular letter has been sent out to the municipal treasurers?

A Undoubtedly it has, as copies of all office circulars are sent to the municipal treasurers.

Q Showing you this document, which for identification has been marked "Exhibit 5," I ask you if you recognize it.

A Yes, sir.

Q How do you recognize it?

A It is a letter addressed by me to the Fiscal of the City of Manila on March 5, 1923, requesting the prosecution of Chang Bong Chong for violation of the Accounting Law.

Q Is that the same case of Chang Bong Chong to which you have heretofore referred in your testimony?

A Yes, sir, it is the same.

Q Do you know how many cases of merchants were examined in 1922 by the Chinese accountants of the Income Tax Division of your Bureau?

MR. GIBBS: I object to the question for the reason that it seeks to furnish isolated information upon a subject which should have been fully set forth and presented

by the Collector of Internal Revenue in compliance with the order of the Supreme Court.

MR. FELIX: It appears that our opponent is in error, inasmuch as the Supreme Court has not ordered the Collector of Internal Revenue to furnish the data mentioned in this question. This question refers to cases examined for the purposes of the income tax.

MR. GIBBS: It refers to the Chinese merchants inspected by the Chinese accountants.

A During that year, the Chinese accountants in the Income Tax Division inspected 477 returns of Chinese.

Q Books, or returns?

A Returns of Chinese.

Q Were those the only returns that could be inspected?

A By the Chinese accountants, I believe so.

MR. GIBBS: I move to strike out the answer—it having been made before I had an opportunity to object to the question—on the ground that the testimony of this witness is not the best evidence as to the examinations made by the Chinese accountants or as to the ability of the Chinese accountants to examine the returns.

MR. FELIX: I object to the motion on the ground that it is not based upon any legal ground.

Q Do you know whether there were any under-declarations in those cases that were inspected that you have referred to?

MR. GIBBS: I object to the question on the ground that the respondents were ordered by the Supreme Court to furnish to counsel for the petitioners the data as to the number of under-declarations by Chinese merchants and that they have failed to do so, and this

is an attempt to present isolated evidence on the subject, not in compliance with the order of the court.

A In the comparison of these returns with the books of account of the interested parties, differences were found which amount to more than P600,000.00 which was not declared.

Q One of the witnesses for the petitioners, Chong Ong Cha, testified here that the Filipino inspectors of the Bureau of Internal Revenue can read numbers written in Chinese characters. Do you know whether the Filipino inspectors of your Bureau can read Chinese characters or figures written in Chinese characters?

MR. GIBBS: I object to the question on the ground that it calls for a conclusion of the witness and as not calling for the best evidence, no foundation having been laid for its admission.

Q So far as I know, no Filipino agent of the Bureau of Internal Revenue knows Chinese or can read or write Chinese. The inspections that the Filipino agents make in the Chinese establishments are limited solely to comparing the sales book of the Bureau of Internal Revenue, which is kept in Arabic characters, with the books kept in Chinese characters, having one of the Chinese read the different entries which appear in the Chinese books in order to compare them with the entries which appear in the sales book in Arabic characters, but this inspection is very difficult, and it is not so efficient as if the Filipino inspectors could inspect and compare these books themselves.

CROSS-EXAMINATION BY MR. GIBBS:

Q Do you remember the order of the Supreme Court of July 12, 1923, requiring the respondent Collector of Internal Revenue to furnish to the petitioners a statement showing the total amount of the sales tax paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922, the total amount of income tax paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922, and the total amount of penalties paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922? Do you remember that order?

A Yes, sir, I remember having seen and read a copy of that order.

Q Have you complied with that order?

A I am complying with the order, and the Bureau is at present preparing the data which the Supreme Court desires.

Q When will you have it finished?

A I can't state exactly when we will be able to finish it, but I have ordered that the greatest possible number of employees be put upon that work, so that its preparation may be completed within the shortest possible period of time.

Q Can't you indicate approximately when it will be finished?

A No, sir.

Q What part of the work has been done?

A We have done a great part of the work corresponding to 1922 with reference to the merchant's tax.

Q You mean to say all kinds of merchants?

A No, Chinese merchants, as the order of the Supreme Court directs.

Q And you have done nothing upon the question of penalties?

A Yes, sir, the taxes and the penalties which the Chinese have paid.

Q With reference to the sales tax?

A Yes, sir, that is what I was referring to in my answers to your previous questions.

Q What is the principal part still lacking in order to complete it?

A The completion of the data corresponding to 1922, and the segregation of the coupons or receipts which show the payments made by Chinese merchants in 1918, are lacking.

Q Then you haven't the slightest idea as to when it may be finished?

A It is difficult to determine, in view of the nature of the work, which involves the segregation of the receipts showing what has been paid by the Chinese, the totalling of them, and then making up a recapitulation of those payments.

Q When did you begin this work?

A I don't remember the date exactly, but it is some time since I ordered that the work be commenced.

Q Immediately after the issuance of the order of the Supreme Court?

A I can't say whether it was immediately afterward, because I didn't receive a copy of the order of the Supreme Court immediately.

Q But you had knowledge of the order?

A I found out about it afterward, and as soon as I found out about it, I put some of the employees on that work.

Q Then you can't say whether it will be finished during the whole of next year?

A I believe that the work will be finished in the early part of the coming year.

Q That is to say, before the middle of the year?

A I believe it will be long before that.

Q You say that you had an understanding with the Fiscal that these cases which were filed against the three persons mentioned by you would be test cases, and that no further actions would be brought until the constitutionality of the law was determined. Is that true?

A Yes, sir.

Q Was that understanding a verbal or a written one?

A A verbal understanding.

Q Was any record of any kind made of it, that you know of?

A None that I know of.

Q It wouldn't have done the petitioners much good if they had wanted to take advantage of it, would it?

A I didn't quite understand you.

Q It wouldn't have done the petitioners much good if they had wanted to take advantage of that understanding.

MR. FELIX: I object to the question as being wholly immaterial.

A Those cases were filed at the request of the defendants themselves, in order that the question of the constitutionality of the law might be determined by competent tribunals, and, as a matter of fact, at that

time we were not prepared to file any complaints, inasmuch as no taxes for the year 1923 had become due, and we could hardly examine the books of account of the Chinese without any grounds therefor, which were supplied by the filing of the returns by these Chinese merchants for the assessment of their taxes. The taxes of the merchants are due at the end of every quarter, and if I remember correctly, the letter which was sent to the Fiscal requesting that these complaints be filed against these Chinese was written prior to the end of March.

Q Was it you personally who communicated with these attorneys for the Chinese?

A Yes, sir, with one of the attorneys.

Q Therefore, all that you know with reference to the understanding between the attorneys for the Chinese and the Internal Revenue Bureau in connection with this case was what passed between you and one of the attorneys?

A Yes, sir, one of the attorneys.

Q Which attorney was it?

A If I remember correctly, it was Mr. Buencamino who came to the office to request me to file a complaint against his client, inasmuch as he was prepared to defend the case.

Q Then, as a matter of fact, these complaints were filed as a favor to the defendants, rather than to punish them for the violation of Act No. 2972.

A No, sir, it was done at the request of the defendants themselves, to afford an opportunity for the discussion and determination of the constitutionality of the law.

Q As it is being tried now?

MR. FELIX: I object to the question on the ground that it is the opinion of the person addressing it, and nothing more, and therefore, it is immaterial, impertinent and incompetent.

MR. GIBBS: I object to counsel instructing his witness on the stand in order to prevent his answering my questions as he himself may desire.

A I can't answer that question. I believe counsel should put the question to himself, as being the person who can properly answer it.

Q Well we are testing the constitutionality of the Act according to the understanding that you had with this attorney, are we not?

MR. FELIX: I object to the question on the ground that it is wholly impertinent and immaterial to the matter at issue. That is a matter for the Supreme Court to decide, and it is not incumbent upon the witness to decide whether the petitioners have or have not tested the constitutionality of the law. That is precisely the question at issue in this case.

A I can't answer that question.

Q Then you don't understand what the object was of this understanding that you had with Mr. Buencamino?

A I understood Mr. Buencamino, when he came to the office, to tell me that he had a client who was prepared to submit this matter to the courts for decision.

Q Do you know approximately how many Chinese merchants there are in the City of Manila?

MR. FELIX: I object to the question on the ground that it is outside the field of the direct examination.

A I can't state the number exactly.

Q I am not asking for the exact number, but the approximate number, if you khow it.

A There should be seven or eight thousand merchants, more or less.

Q Do you know the number of Filipino merchants in Manila?

A No, sir.

Q Approximately?

A I can't state that, either; I can't state the approximate number of Filipino merchants in the City of Manila.

Q Are you sure that there are more than four thousand Chinese merchants in Manila?

A I believe there should be a little over four thousand, yes.

Q But you don't care to swear that there are more than four thousand?

A I cannot; I can't state definitely, because in that case I would be stating the exact number, and that is something that I don't know.

Q Can you swear positively that there are as many as four thousand Chinese merchants in Manila?

A No, sir, I don't know the exact number; I can't state it exactly.

Q The proportion of Chinese merchants and Filipino merchants is approximately the same in Manila as in the provinces, isn't it?

A I can't say what the proportion is between the Filipino and the Chinese merchants.

Q But I am asking you if the proportion between the merchants of the two nationalities is approximately the same in Manila as in the provinces.

A I have not attempted to inform myself as to the proportion, and the Bureau does not carry any statistics

by nationalities. Therefore, it would be difficult for me to answer that queston.

Q Referring to this Exhibit 2 of the respondents, do these data with respect to the City of Manila include all the Chinese merchants of Manila?

A No, sir, only a part of the Chinese merchants.

Q And you haven't the slightest idea what part?

A If I remember correctly, the establishments which were visited by our agents were only those which were located in the principal business streets. Due to lack of personnel and the shortness of the time, we didn't have an opportunity to visit all the Chinese establishments.

Q When did your office stop the work represented by that certificate?

A I can't state exactly.

Q The date if this document is June 30, 1923: up to what date had you worked to obtain these data?

A I believe that we sent out the circular letter to our agents last year—I don't remember exactly on what date—requesting these data, but in Manila it was a physical impossibility to visit all the Chinese establishments, inasmuch as we had other and much more important work that we could not neglect.

Q But you haven't answered my question as yet.

A And as an evidence of that, many of the provinces didn't report at all.

Q But at what date did you stop this work?

A I have already said that I can't state exactly.

Q Well, before making this certificate "Exhibit", dated June 30, 1923, you had ceased your work of collecting the data which appear in this document?

A With regard to Manila, yes.

Q And with regard to the provinces?

A Some of the provinces, as I said, have not up to this time sent in their reports.

Q Have you received any additions to this report Exhibit 2 after having made it up?

A I don't know if we have received any in the office or not.

Q If such additional reports had arrived in the office would you have known it?

A Not always, because it refers to minor details, and I have not the time to handle all these small matters.

Q Isn't the matter contained in this certificate of special interest to you?

A It certainly is of interest, but it is a matter of interest more particularly to the man in charge of that division, because it is impossible for a man in charge of a Bureau to handle these details.

Q But according to your information, all this work has been stopped in Manila and in the provinces; isn't that true? In other words, it is not the intention to complete the work which was begun in this certificate Exhibit 2?

A If I remember correctly, I believe that I ordered that tracers be sent to the agents who had not sent in their reports.

Q When?

A I don't remember the date now.

Q And you are not sure of having sent those tracers?

A I remember it, yes, because when we made up that statement I found that many provinces were missing, and then I ordered that tracers be sent to the agents who had not sent in their reports.

Q And so far as you know, no answer was received from any of them?

A I don't know.

Q And if you had the intention at any time to complete the data begun in the certificate Exhibit 2, how is it that you have stopped obtaining it in Manila?

A I stopped the work in Manila because of the fact that my force was so busy with other and more important work.

Q In how many cases were the books of Filipino merchants inspected during the last year?

MR. FELIX: I object to the question on the ground that no foundation has been laid for it and that it is wholly immaterial.

A I can't state the number.

Q Have all the returns of the Filipino merchants in Manila been audited?

A In the course of the inspections made by our agents, no distinction is made as to the nationality of the taxpayers whom they inspect. Ordinarily, our audits are made as a result of accusations, and then a general audit is made, which applies to all merchants without distinction.

Q When you say that the Chinese accountants have audited the returns of 477 Chinese, are you referring to Chinese in Manila or to Chinese in all parts of the provinces?

A I believe it includes also some provinces to which we had sent Chinese accountants.

Q And when you say that these Chinese accountants have audited the returns of these 477 Chinese, do you mean to say that in making this audit the account-

ants have compared the returns with the books of account of the Chinese?

A Yes, sir.

Q And how many Chinese accountants did this work?

A I don't remember exactly, but in the Income Tax Division during that year we had three or four accountants in that division.

Q Those returns of Chinese were only income tax returns, or were they returns upon sales?

A No, sir, they covered only the income tax returns.

Q And during what period of time did those two or three Chinese accountants inspect the returns and the books of 477 Chinese?

A During the entire year 1922.

The hearing was then, at 4:30 o'clock p. m., continued until Friday, December 7, 1923, at 2:30 o'clock p. m., the examination of the witness on the stand not having been completed.

Friday, December 7, 1923.

The hearing was resumed, at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Juan Posadas, Jr., the witness under examination at the time of adjournment of the previous session, resumed the stand and testified as follows:

CROSS-EXAMINATION BY MR. GIBBS (continued):

Q Mr. Posadas, so far as you know personally, have any Chinese or other foreign merchants who formerly kept their books in languages other than English, Spanish, or some local dialect, changed the language in which their books of account were formerly

kept to English, Spanish, or some local dialect since the passage of Act No. 2972?

A No, sir, I have no knowledge of any.

Q So that the passage of Act No. 2972, so far as you know, has as yet had no effect upon the keeping of books of account in the Philippine Islands?

A No, sir.

Q So far as you know personally, in how many different languages or dialects are the books of account of the merchants of the Philippine Islands now kept?

A They are mostly kept in English, Spanish, Chinese, Japanese and Hindu; at least, I have seen books kept in those languages.

Q Have you ever seen any books of account of merchants in the Philippine Islands kept in any languages other than those you have mentioned?

A No, I don't remember having seen any.

Q Have you ever seen any books of account of merchants kept in any local dialects?

A No, I haven't seen any.

Q Have you personally ever inspected any books of account of merchants?

A Yes, sir, in cases of controversy the books are submitted for my inspection.

Q Since when have you made inspections personally of the books of account of merchants?

A That frequently occurs in the office when our inspectors find some difference as to which the merchants do not agree with them.

Q But you have not answered my question: since when have you made inspections personally of the books of account of merchants?

A I don't make the inspections proper, but in case any difference is found in the books and the merchant does not agree to the difference as found by our agent, then the books are submitted to me for decision as to the matter in dispute.

Q Since when have you done that?

A This morning a merchant submitted his books of account to me, and a short time ago I inspected the books of account of a bank.

Q But you have not yet answered my question.

A As I say, this morning a merchant submitted his books of account to me, and it has not been long since I inspected the books of account of a bank.

Q That is not an answer to my question. What I asked was when you began to make such inspections.

A I remember having begun to make those inspections from the time of my appointment as Deputy Provincial Treasurer of Zambales, in 1902.

Q Referring to the period in which you have been in the Bureau of Internal Revenue here in Manila, when did you begin to make those inspections?

A I was appointed as Deputy Collector of Internal Revenue in March of 1920.

Q And how many inspections of this nature have you made, approximately, during your—

A I don't remember the number, because I often have to make them with great frequency.

Q Can you state approximately how many each week?

A No, sir.

Q Would you say that you make two inspections each week?

A I couldn't say that, but it is a fact that I make them

with great frequency. Whenever a difference of opinion exists between our agents and a merchant and the matter is appealed by him, it is submitted to me for decision.

Q But can't you state approximately how many of these inspections there are each month?

A No, sir.

Q Would you not say that it would reach ten inspections per month?

A I don't believe it amounts to ten inspections per month.

Q Would it amount to five per month?

A As I have already stated, I only have occasion to see these books when a difference of opinion exists between our agents and a merchant, and I don't do it as a matter of routine work, but only to decide if the difference found by our agent should or should not be included for the purpose of assessment of taxes which may be due.

Q Then those differences arise very rarely?

A Considering the number of taxpayers that there are in the Philippine Islands, they occur quite frequently.

Q Would you say that there are probably one dozen of these cases in a year?

A I believe there are more, because, while it is true that there may be a week or a month in which no such case comes up, on the other hand, during other periods many cases arise.

Q Probably twenty per year?

A I can't state with any degree of exactness.

Q But you wouldn't say that there are more than twenty cases per year?

A As I have already said, I can't state the number of cases.

Q And during this period of your service in the Bureau of Internal Revenue, since March, 1920, you have been the person who has decided these disputes?

A Not always.

Q Who else has taken part in the decision of such disputes?

A The Collector of Internal Revenue, Mr. Trinidad.

Q Who else?

A And the chiefs of division in charge of audits of books of account.

Q How many of them are there?

A We have two chiefs of division: the Inspection Division and the Income Tax Division.

Q So that the only persons among the directors and employees of the Bureau of Internal Revenue who would take part in the determination of such disputes would be either the Collector, Mr. Trinidad, or yourself, or one of those two chiefs of division?

A Yes, sir.

Q And those disputes arise with reference to the books of account of the merchants of Manila?

A Ordinarily, yes, although sometimes we bring books of account from the provinces for inspection in the main office.

Q How many cases of that nature have come up?

A I can't state exactly, because that is a part of the routine work of the office, especially so far as the books of account of the Chinese are concerned.

Q Can you mention any cases in which the books of account of merchants in the provinces have been brought to Manila?

A I can't state to you at this moment which cases those

were, but in any event they appear in the records of our office.

Q Is there any set of books of any provincial merchant in your office at the present time?

A I don't know.

Q Has there been in your office during the present year a set of books of any Chinese merchant in the provinces?

A Yes, there have been several set of books.

Q Of Chinese?

A Yes, of Chinese.

Q What are their names?

A I don't know their names.

Q How many have there been?

A I don't know, but that appears in the records of the office. That is routine work, and one can't remember all the routine work of the office.

Q But you can't mention any one case?

A At this moment I can't mention any, no.

Q What languages do you read and write, Mr. Posadas?

A I know Spanish, English, Tagalog and Ilocano.

Q What is your own dialect?

A Ilocano.

Q Have you studied Tagalog?

A No, sir.

Q Are there any members of your family whose dialect is Tagalog?

A As his native dialect, no.

Q How did you learn Tagalog?

A By intuition.

Q Have you ever studied Ilocano?

A No, because I was born in an Ilocano community, although my family ordinarily speaks Spanish.

Q Do you know any of the other 85 dialects of the Philippine Islands?

A No, sir, outside of those two, none.

Q How are the inspections of the books of accounts of merchants in the provinces and in other cities ordinarily made?

A They are made by the agents of the Bureau of Internal Revenue.

Q Sent out from the main office here in Manila?

A Yes, sir; the islands are divided into tax-collection districts, and each tax-collection district has a supervising agent and a sufficient number of assistant agents to audit and check up the taxes which are collected within their respective districts.

Q How many of those districts are there in the Philippine Islands?

A We have thirteen tax-collection districts.

Q Where are they?

A Each district comprises several provinces.

Q What is the seat of each one of these tax-collection districts?

A Aparri; Vigan; Dagupan; in Manila we have three districts; Batangas; San Pablo, Laguna; Albay; Iloilo; Cebu; Tacloban; and Zamboanga. In Manila we have three districts: No. 5, No. 13, and No. 4.

Q Do the municipal treasurers of the various municipalities in the provinces have anything to do with the inspection of books of account for internal-revenue purposes?

A Yes, sir, but there are very few municipal treasurers

who interest themselves to the extent of auditing the books of account of the merchants.

Q Who are those municipal treasurers?

A I can't tell you their names or the towns where they are stationed, but once in a while the office receives reports from them.

Q Why are there isolated cases of municipal treasurers who inspect books of account for the Bureau of Internal Revenue?

A Because the municipal treasurers generally confine themselves to receiving the taxes paid in by the taxpayers, and on account of the other duties which they have to discharge as municipal treasurers and as representatives of the provincial treasurers, they claim that they have not sufficient time to do the work of inspecting the books.

Q But what I am asking you is, how is it that there are these isolated cases of inspections made by municipal treasurers rather than by the regular inspectors of the Bureau of Internal Revenue?

A As I have stated, the activities of the municipal treasurers are ordinarily confined to receiving payments of taxes, and on account of their other duties they cannot find the time to do this other work, that is, the inspection of the books of account of the merchants; and as to these isolated cases, I mean to say that they are treasurers somewhat more energetic than the others and that they have found time to make these inspections.

Q Then how do you know in which districts it is necessary to maintain inspectors of the Bureau of Internal Revenue—that is, of the main office?

A It is according to the importance of the districts. It is the duty of the agents of the Bureau of Internal Revenue to inspect the books in all the towns within their districts.

Q Even though they have already been inspected by the municipal treasurers?

A Yes, sir, because not all of the municipal treasurers inspect the books of account of the merchants or the establishments subject to taxation.

Q And how many inspectors or accountants have you engaged in this work outside of Manila?

A Including agents and assistant agents, we have outside of Manila between eighty and ninety persons, aside from the other employees engaged in special work, such as the suppression of illicit distilleries and the supervision of manufacturing establishments and distilleries.

Q And among those eighty agents and inspectors, how many are there of Chinese nationality, or who can inspect books of account kept in Chinese characters?

A If I remember correctly, we have at present one Chinese accountant stationed in the Cebu district.

Q And he is the only Chinese inspector or agent outside of Manila?

A So far as I remember, yes.

Q And in what manner have you been inspecting the books of account of the Chinese merchants in the provinces?

A Ordinarily, our agents make a superficial comparison, having the Chinese themselves read the entries which appear in their books of account, in order to compare them with the returns which they have made for tax purposes; and they examine the Bureau of Internal

Revenue sales books, with which the greater portion of the Chinese merchants have provided themselves, as a rule.

Q Is it not true that many of these sales books are kept in Chinese characters?

A As I have stated, the greater part of the Chinese establishments, in addition to their books of account kept in Chinese, also have the Bureau of Internal Revenue sales book, which is kept in Arabic characters.

Q How do you know that?

A By the statistical table which we have compiled and which has been introduced here as one of the exhibits.

Q And those statistics which appear in this exhibit constitute the only information which you have upon the matter?

A Yes, sir.

Q Can you give any instance of books of account of Chinese having been sent from Albay to Manila for inspection?

MR. FELIX: I object the question on the ground that it is immaterial.

A As I have stated, it is rather difficult to remember all that.

Q Do you keep any record of the cases in which the books of account of merchants have been sent from the provinces to the city of Manila for inspection?

A We do.

Q Have you a record of all those cases?

A Yes, sir, of all cases.

Q Can you produce the record showing those cases to which you refer?

A I can't produce it.

MR. FELIX: I object, on the ground that these inspections are of a privileged character and it is so provided by law, and it would constitute a violation of the law to introduce such records.

Q What you claim here is the privilege of making any statement you see fit to make as to the records of your office, and deny me the right to check it up; is that it?

MR. FELIX: I object to the question, on the ground that the object of the parties respondent is to see that the law is not violated, and all the statements of witness have been in answer to questions by the attorney for the petitioners on cross-examination. An examination of the law itself will show that neither the Collector of Internal Revenue nor his assistants may divulge what is ascertained in those inspections, under penalty of the law.

A I can't produce it, because the law prohibits my doing so.

Q Are you willing to testify that the books of as many as half a dozen merchants of all nationalities have been forwarded from the provinces to your office for inspection during this year?

A As I have said, I can't state the exact number of cases in which the books of merchants in the provinces have been sent to the main office for inspection.

Q Have any books of merchants of nationalities other than Chinese been forwarded from the provinces to your office here in Manila for inspection?

A So far as I know, none.

Q This practice of sending the books of merchants from the provinces to your main office in Manila for inspection is limited to the Chinese merchants, is it?

A Ordinarily, it is limited to the books of account of the Chinese, but from time to time books of account of merchants of other nationalities are received also.

Q But you don't remember of a single case of the books of merchants of other nationalities than the Chinese having been sent to Manila?

A Yes, sir, last year I remember having inspected the books of account of an hacienda in Negros for income-tax purposes. I believe that was last year.

Q In what language were they kept?

A In Spanish.

Q That is the only case that you remember?

A That is the only case that I remember now.

Q And according to your best recollection, it is the only case that there has been during your period of service in the office of the Bureau of Internal Revenue of merchants other than Chinese?

A It is the only case that I remember now, but I believe there must have been other cases.

Q That is only your opinion; you have no—

A Yes, it is my opinion; but that is the only case that I remember, the case that I have mentioned.

Q Why are those cases of the sending of books of account from the provinces to Manila for inspection ordinarily limited to Chinese merchants?

A Because ordinarily our Filipino and American agents can easily inspect the books of account which are kept in languages comprehensible to them.

Q Then the reason for bringing these books of the Chinese merchants to Manila is the shortage of Chinese accountants in the provinces?

A Yes, sir.

Q And if you had sufficient Chinese accountants, then there would be no occasion for sending these books to Manila?

A Only in cases of some controversy, for the final decision of the office.

Q Have you had such controversies before now with respect to differences in the books of acount of the Chinese merchants?

A Yes, sir, there have been many differences found in the books of the Chinese merchants.

Q And which one of you has decided these controversies?

A Sometimes they are submitted for my decision, at other times they are submitted for the decision of the Collector, but in the majority of cases they are decided by the respective chiefs of division.

Q In what manner have the chiefs of division carried out these inspections and made these decisions?

MR. FELIX: I object to the question, on the ground that it is asking the witness to testify as to something which he can only know by hearsay.

A It depends entirely upon the translations which our Chinese accountants make for us.

Q And you have frequently made a decision pursuant to such a procedure in these cases of controversy?

A Yes, in the same manner. As I do not understand Chinese, when a matter is submitted for my decision and the books are written in Chinese, I must

necessarily depend upon the report or translation which the Chinese accountant gives me.

Q And how many of these Chinese accountants have you at your disposal in the office of the Bureau of Internal Revenue to assist you in these cases which are submitted for the decision of the chiefs of division and the directors of the bureau?

A Generally, we have in the main office some four Chinese accountants.

Q Who is the chief of these accountants?

A Of the Chinese accountants?

Q Yes.

A They are attached to Inspection District No. 5 and to the Income-Tax Division.

Q For how long a time have you had these four Chinese accountants in the main office?

A These Chinese have been there for varying periods of service.

Q Well, for how long a time has the man been there who has the longest period of service?

A I believe we have had him there for many years; I don't remember exactly how long.

Q And he has been there for a much longer time than you?

A Yes, sir.

Q What is his name?

A Sy Siangco.

Q Is that the same Sy Siangco who is now assisting you and the Fiscal in the conduct of this case?

A Assisting us, no. I have brought Mr. Sy Siangco here only so that he might intervene in case the translations of the testimony of the Chinese witnesses of the petitioners should not be correct.

Q He is an accountant and an employee of the main office in whom great confidence is reposed, is he not?

MR. FELIX: I object to the question on the ground that it is wholly immaterial. This has nothing whatever to do with the case.

A The very length of his service in the office indicates that we have confidence in him.

Q And he is probably the man who has examined more books of account of Chinese than any other employee of the Bureau of Internal Revenue; isn't that so?

A It is very possible, considering his many years of service as compared with the other Chinese accountants, who have not been there for the length of time that Sy Siangco has been in the office.

Q And therefore, among all the employees of the Bureau of Internal Revenue, he is probably the person who has the greatest knowledge as to the books of account of the Chinese, the manner in which they conduct their businesses, and their ability to comply with the provisions of Act No. 2972?

A In view of these many years of experience, it may be presumed that he is very well informed as to the system and the manner in which the Chinese books of account are kept.

Q Neither the Collector nor the chiefs of division make original inspections of books of account, do they?

A Ordinarily, no.

Q Well, do they ever make the original inspections of books of account of merchants?

A No, they are not required to make original inspections.

Q So that, with the exception of the isolated cases which you have mentioned, in which the directors of the

Bureau or the chiefs of division find it necessary to decide differences between the merchants and the inspectors, you rely entirely upon your inspectors in the field to make the inspections of delinquent merchants or of merchants who have made under-declarations; isn't that so?

A Yes, sir, we do.

Q And, therefore, assuming that it would be possible to employ a sufficient number of competent Chinese inspectors of books of account, there would be no advantage in the enforcement of Act No. 2972 except in so far as it might aid the directors of the Bureau and the chiefs of division in making the inspections incident to deciding disputes between the inspectors and the merchants that you have mentioned?

A The advantage of the Accounting Law, which compels merchants to keep their books in English, Spanish, or some local dialect, lies precisely in the fact that it would facilitate the inspection of these books of account by the employees of the Bureau of Internal Revenue, and enable them to check up the taxes which have been paid by the merchants and ascertain whether or not they agree with the transactions actually had. This work is at present being done so far as concerns the merchants who keep their books in languages comprehensible to the Bureau, and to a certain extent it means that these merchants are penalized. On the other hand, it has been almost impossible to do this with regard to those merchants who keep their books entirely in languages not comprehensible to the office, and the

net result therefore is that while we can collect differences in taxes due from part of the merchants, it is almost impossible to do so with regard to the other part.

Q And why haven't the directors of the Bureau and the chiefs of division been able to make correct inspections of the books of the Chinese for the purpose of these decisions which they make?

MR. FELIX: I object to the question on the ground that it is based upon a false assumption, because the witness has not said that the inspections made have not been correct, but that it has been impossible to make the inspections at all.

MR. GIBBS: In view of the statement of the Fiscal, I will amend the question.

Q I will ask you why you have not been able to make, to your entire satisfaction, the inspections incident to these decisions which you make?

A Because the Bureau of Internal Revenue has never been able to have a sufficient number of competent Chinese employees to make the inspections of the books of account of the Chinese.

Q But have you not been able, through the system of translation, to inform yourself thoroughly as to the contents of the books of the poor Chinese Merchants?

A As I have said, these matters in which the directors or the chiefs of division intervene refer not so much to the figures entered, but rather to the technical and legal phases of a question—whether a certain transaction should or should not be included for tax purposes.

Q Couldn't this be done through the method of translation?

A I don't say it couldn't be done through the system of translation, but it would be too long and costly a process.

Q What you mean to say is that, no matter how few may be the inspections necessary to be made by the directors and the chiefs of division incident to decisions on these controversies, the system of translation is too slow and difficult?

MR. FELIX: I object to the question on the ground that it assumes a statement on the part of the witness which he has not made. If I remember correctly, the witness stated that the difficulty lays in the original inspections made in the first instance by the inspectors, and not in inspections made by the Collector and the chiefs of division.

MR. GIBBS: I call the attention of the Commissioner and of the Court to the fact that the Fiscal is giving instructions to the witness, in order to enable him to escape from the difficult situation in which he finds himself.

MR. FELIX: I refer back to the statement made by me. The witness is too intelligent, and his reputation is too well established, for him to accept instructions and to testify to matters which in his opinion are not true. On the contrary, the question put to the witness is an improper question on cross-examination, and it attempts to put into the mouth of the witness things which he has not said, thus tending to cloud the issues which should be cleared up.

MR. GIBBS: The witness has understood the question very well, and if he chooses either horn of the dilemma in which you have left him, he will involve himself in still greater difficulties. In answer to the statement of the Fiscal, and especially with reference to his instructions to the witness, I wish to make it appear that I am willing to allow him to take the witness' place and answer the question as he wishes.

MR. FELIX: I have no objection to the petitioners' calling me as a witness, and I will tell all that I know.

MR. GIBBS: Following out the suggestion of the Fiscal, I will put the following preliminary question:

Q What has been and what is the difficulty in the original inspections made by the inspectors, or in the audits made by the heads of the office or the chiefs of division?

A For the proper and efficient collection of the taxes, the isolated inspections which are made by the Collector and by the chiefs of division are not the principal part of the work, but this consists rather in the inspections made by the agents, the assistant agents, and the examiners in the office.

Q Therefore, the difficulties, if any there are, with respect to these inspections of the Collector and the chiefs of division incident to these decisions to which you have referred are insignificant.

A From the point of view of accounting, they are insignificant, in view of the fact that it is not our duty to make complete audits of the entries which appear in the books, but only to decide whether or not an entry should be included for the purpose of assessment of taxes.

Q So that you would not say that these insignificant difficulties would be sufficient to justify Act No. 2972 if it were not for these other difficulties in the original inspection?

A The original inspection is the most important part of our work.

Q Do you care to answer my question?

A I am answering you, and I say that the original inspection is the most important part of our work, inasmuch as it means the examination of each and every one of the books of account kept by the merchants or by persons subject to tax, and for this work sufficient personnel is required.

Q Do you care to answer whether or not these insignificant difficulties which the Collector and the chiefs of division encounter incident to inspection of books in order to make their decisions are sufficient to justify Act No. 2972, which could cause an expense of ten millions of pesos a year to the Chinese merchants?

MR. FELIX: I object to the use of the words "insignicant difficulties" unless the exact statement made by the witness is used. The statement of the witness was that these "insignificant difficulties" were from the viewpoint of accounting only.

MR. GIBBS: I enter a protest, on the ground that this witness is a man of sufficient intelligence to direct the Bureau of Internal Revenue, and he doesn't require the instructions of the Fiscal in order to be able to answer my question.

MR. FELIX: I object to the statemet of opposing counsel to the effect that I am instructing the wit-

ness. The fact that he is accusing me of doing that indicates that he is accustomed to doing it himself.

A The purpose of the law is sufficiently clear, and I don't believe it was adopted for the sole purpose of eliminating those difficulties, but rather to do away with other and greater difficulties encountered in the collection of taxes in this country.

Q You have not yet answered my question, which is whether or not, in your opinion. these insignificant difficulties to which you have alluded are sufficient to justify Act No. 2972, without reference to any other reasons for the adoption of the law.

A I believe that the question is duly answered, according to my true knowledge and belief, and that there is no necessity for modifying the answer.

Q Then you refuse to answer it, beyond what you have already said?

A That is all I can say in answer to the question put to me.

Q Now, let us return to the original question, which is: assuming that it would be possible to employ sufficient Chinese accountants to make the inspections of the books of account of the Chinese merchants, what advantage would there be in enforcing Act No. 2972 so far as refers to your office?

A I remember having already answered a similar question, and I ask that the record be referred to in order to ascertain what my answer was.

Q According to my recollection, your answer was with reference to the difficulties encountered in the main office by the Collector and the chiefs of division in connection with these inspections incident to deci-

sions on controversies between your agents and the merchants.

A I don't remember having stated that in the main office great difficulties were encountered in the inspection of the books of account of the merchants for the purposes of decisions on disputed points, because in the majority of the cases these controversies refer to the legal question of whether or not an entry should be included for purposes of taxation.

Q We have already eliminated as being too insignificant the difficulties incident to these inspections or audits in the main office, and therefore I presume we are now to limit ourselves to the difficulties encountered by the agents and inspectors in the field, or outside of the main office; and basing ourselves on this assumption, and basing ourselves on the assumption also that it would be possible to employ sufficient Chinese accountants to inspect the books of account of the Chinese merchants as the books of account of all other merchants are inspected, what advantage would result from the enforcement of Act No. 2972?

A The advantage consists in that it would enable a greater number of the employees of the Bureau of Internal Revenue to inspect intelligently the books of the taxpayers.

Q But you have not yet accepted the hypothesis that there would be sufficient Chinese accountants to make the proper inspections of the books of account.

A I cannot accept that hypothesis, in view of the experience of the office itself, which demonstrates that it has never been able to count upon getting a sufficient number of capable accountants to inspect the books of the Chinese merchants.

Q Neither do we care to accept your idea as to this point, and therefore we are putting to you a hypothetical question, and you would do me a great favor if you would answer that hypothetical question, and for this purpose it is necessary that you accept the hypothesis upon which the question is based.

MR. FELIX: I object to the question precisely because it is based upon a hypothesis which is not accepted by the witness, and he could hardly, therefore, answer it.

A As I have said. I cannot accept that supposition that the Bureau of Internal Revenue could find a sufficient number of Chinese accountants, in view of the fact that the experience of the office itself has demonstrated that we have never been able to find a sufficient number of Chinese accountants to make these inspections.

Q Can't you do me the favor to accept this hypothesis and answer my question upon this hypothesis, and you can then later on establish the fact that it is a false hypothesis? I wish to expain to you that it is a common practice to put hypothetical questions upon the theory of the attorney interrogating the witness, and that it is the duty of a witness to answer the hypothetical question, even though he may not consider that the hypothesis be true, and I therefore ask you again to answer the question: Upon the assumption that it would be possible to employ sufficient Chinese accountants to inspect the books of the Chinese merchants, what advantage would there be then in enforcing Act No. 2972?

MR. FELIX: I repeat the objection made to the former question.

A I believe I have complied with my duty when I answered similar questions put to me. Now, I cannot accept an assumption which in practice has not been justified.

MR. GIBBS: I ask the Fiscal, as the attorney representing the respondents, to instruct the witness that it is his duty to answer my hypothetical question.

MR. FELIX: I cannot oblige the petitioners as they desire, for the following reason: in order that the answer of the witness may be a proper one and in accordance with his knowledge, he should avail himself, as a basis for his answer, of the knowledge which he has, and not having that knowledge of the existence of those facts, he can hardly answer the question, as he lacks a basis therefore and there would not be a correct conclusion drawn.

MR. GIBBS: I ask that the Commisioner submit to the Supreme Court for decision the question of whether or not the witness should answer the hypothetical question that I have just put. I ask that the question be submitted to the court between now and our next session.

MR. FELIX: I have not the slightest objection to the submission of the question as indicated.

The hearing was then, at 4:45 o'clock p. m., continued until Friday, December 14, 1923, at 2:30 o'clock p. m.

Friday, December 14, 1923.

The hearing was continued at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

COMMISSIONER: After consideration of the motion presented by Mr. Gibbs, the attorney for the petit-

ioners in this case, the Supreme Court has ruled that the witness may be compelled to answer the hypothetical question propounded by Mr. Gibbs, although the witness will be permitted to explain his answer, and also the right is reserved to the Fiscal to except to the ruling of the court.

MR. FELIX: On last Wednesday afternoon—if I remember correctly — I was furnished with a written copy of the motion of Mr. Gibbs with reference to the question that he desired to put to the witness, Mr. Posadas. I spent all day yesterday in court, and therefore I really have not had time to answer the motion in writing, as I desired to do. One of the grounds upon which we objected to the question was that the records do not show that the existence of a sufficient number of Chinese accountants has been established, as the hypothetical question assumes. In view of the statement made by the Commissioner to the effect that the objection made on behalf of the respondents has been overruled, with all due respect to the Court we desire to enter our exception.

Juan Posadas, Jr., the witness under examination at the time of adjournment of the previous session, resumed the stand and testified as follows:

CROSS-EXAMINATION BY MR. GIBBS (Continued:)

Q The hypothetical question which you refused to answer, Mr. Posadas, and which the Supreme Court has required you to answer, is as follows: Upon the assumption that it would be possible to employ sufficient Chinese accountants to inspect the books of the

Chinese merchants, what advantage would there be then in enforcing Act No. 2972?

A The advantage which would be derived from Act No. 2972 in case it were enforced would be the facility with which the greater part of the representatives of the Bureau of Internal Revenue could inspect the books of account of the merchants, in order to check up as to the correctness of the amount of taxes which they had paid.

Q I don't believe that that is yet an answer. Assuming as a basis that there are sufficient Chinese accountants to inspect the books of the Chinese merchants, then what advantage would there be in enforcing Act 2972?

MR. FELIXS I object to the question on the ground that the answer already given is a responsive and categorial answer. It appears that the attorney for the opposing side did not pay attention to the statement that the books would be comprehensible to a greater number of representatives of the Bureau of Internal Revenue.

MR. GIBBS: Nevertheless, I desire that the witness answer the question. Will the witness please answer the question?

A I reiterate the answer given previously to the question, and I desire to clear up the answer by stating that the responsible chiefs of the Bureau of Internal Revenue are all Filipinos who do not speak Chinese.

Q Nor do they speak the eighty-five dialects of the country in which the merchants can keep their books if they wish; isn't that so?

MR. FELIX: I object to the question on the grounds

that it is based upon an assumption that does not appear in the record, which is that the books of account in the Philippine Islands are kept in eighty-five dialects of the country.

A Possibly not all of the officers and employees of the Bureau of Internal Revenue can speak the eighty-five dialects to which you refer, but being Filipinos, it is not difficult for them to learn a local dialect in a short time, especially when it is considered that the alphabet which is used is comprehensible to almost all of them.

Q But if you had sufficient Chinese accountants to inspect the books of the Chinese merchants, then the only disadvantage in having the books kept in Chinese would be in so far as concerned any revisions or inspections which the Collector and the chiefs of divisions might wish to make in the central office; isn't that true?

A No, sir; not only do they take part in the direction and supervision of these subordinate officers and employees in the central office, but also of those who are in charge of tax collection districts.

Q But supposing that you had also Chinese accountants competent to act as supervising agents in the provinces, then what advantage would there be in enforcing Act No. 2972?

A The advantage would consist precisely in the fact that we would avoid the duplication of personnel, because otherwise we would have to duplicate the personnel in each district by employing Filipinos and Chinese.

Q Could you not easily put in a Chinese district inspector and a Filipino district inspector, leaving it to the

Chinese district inspector to inspect the books of the Chinese and to the Filipino district inspector the books of the Filipinos and others?

A It is physically impossible to employ Chinese supervisors, in view of the fact that up to this time I have never known of a Chinese who has qualified himself in the Civil Service to occupy the position.

Q But let us proceed on the assumption that there are such Chinese qualified to act as supervising inspectors: then what advantage would there be in enforcing Act No. 2972?

MR. FELIX: I object to the question on the same grounds previously stated, and on the further ground that all these questions are directed at the wisdom or propriety of Act No. 2972, and we maintain that all questions relating to the wisdom or propriety of a law are questions which cannot be determind by the courts, but are rather a matter which falls within the powers of the legislative branch of the government to decide.

MR. GIBBS: In answer to this remark, which has been so often repeated by the Fiscal, I wish to state that there is no legal decision which supports his objection but that all the decisions are to the exact contrary.

MR. FELIX: In view of the fact that the attorney for opponents denies be existence of such decisions, I will cite the case of Churchill vs. Rafferty, 32 Phil. Rep., page 614, and the still more complete decision in the case of Tajanlangit, et al., vs. Peñaranda, 37 Phil. Rep., page 163, and in the various volumes of reports, among which may be cited 25 R. C. L., pa-

ges 807 and 808—not to mention an unlimited number of other cases.

A There would be no advantage, for the reason that we would have to double the personnel of the office, employing both Filipino and Chinese inspectors, as I said before.

Q But proceeding upon the assumption that you could duplicate the personnel in that way, what advantage would there be in enforcing Act No. 2972?

MR. FELIX: I enter the same objection.

A The Filipino officers and employees who take part in the oversight and supervision of the work of the subordinate employees would be in position to examine and determine definitely whether the work of those accountants is correct or not.

Q You have already testified that this is but an insignificant difficulty which the heads of the office and the chiefs of division encounter in inspecting the books and in ruling upon certain controversies between the merchants and the inspectors; isn't that true?

A There is no difficulty if you refer to books which are comprehensible to those officers and employees.

Q The trouble with you, Mr. Posadas, in testifying as a witness is that instead of answering my questions clearly and concretely, you repeat your previous answer.

A I don't believe I do; I am trying to do my best within the limits of my ability.

Q Well, I think perhaps it is just a misunderstanding on your part.

(The question was then repeated).

MR. GIBBS: Do you see, Mr. Posadas, that you haven't an-

swered my question at all, and I would like to have you answer it, if you will.

A I believe I have given a direct answer to the question.

Q Have you or have you not testified that the difficulties encountered by you as Collector in inspecting the books in Chinese through the medium of a translator are insignificant? Have you testified to that or not?

A I did, but I desire to make it clear that these controversies, as I have stated in my former testimony, only refer to matters of law—whether an entry should or should not be included for purposes of taxation.

Q And didn't you also testify, Mr. Posadas, that the revisions and examinations made by the heads of the office and by the chiefs of division were limited to that class of rulings?

A I don't know whether or not I expressed myself poorly in my former testimony, but I did not mean to say that the intervention of the chiefs of division was limited only to matters of law.

Q All right, if you omitted anything in your previous testimony on that subject, let's have it all. Tell us to what extent the Collector and the chiefs of division engage in the inspection of the books of the Chinese merchants, if you haven't already done so.

A The original inspections of the books of the Chinese are made by the Chinese accountants, and when the differences found by the accountants become a matter of controversy between the accountants and the tax payer, naturally the chiefs of division and the Collector of Internal Revenue, who do not understand or know Chinese, must necessarily depend upon the translations given them and decide whether the dis-

puted entry should or should not be included for the purposes of the assessment of taxes; but in those cases which involve differences found in books of account kept in a language comprehensible to those officers, they find it necessary from time to time to make an audit of those books, to determine the correctness of the differences found.

Q But you have already testified that the only cases in which the heads of the office intervene in the revision of accounts, not only of Chinese merchants but also of Filipino merchants, are cases in which are involved differences between the merchant and the inspector, have you not?

A I believe I testified to that.

Q So that the only possible advantage in compelling all Chinese merchants to keep their books in English or Spanish, so far as the heads of the office are concerned, would be the advantage of revising the books without the intervention of an interpreter or translator, would it not?

A That is not the only advantage.

Q What other advantage is there, so far as the heads of the office are concerned, if they take no part in the inspection of the books outside of those revisions which are made for the purpose of deciding upon the controversies mentioned by you?

A It is not the only advantage, for the reason that the Collector of Internal Revenue is not the only one who takes part in the collection and disposition of those taxes.

Q Let us dispose of each person connected with a department one at a time, and in that process we will now

dispose of the Collector himself, and I would like to have you answer the question eliminating yourself as Collector, and for that purpose I will have the question read.

(The question was repeated:)

A It is true that the heads of the office do not make the original inspections of the books of account, but many times we have found it necessary to look at the books of account in order to determine the true nature of the entries in question, and I believe it would be an advantage for the Collector of Internal Revenue to examine personally the books of account which are submitted for a decision upon any disputed point.

Q Do you wish to answer, yes or no, whether the sole advantage which there would be, so far as concerns the Collector, in the enforcement of Act No. 2972, would be the elimination of the translations?

A I believe so.

Q And now you have testified that the difficulty caused by the translations is insignificant.

MR. FELIX: I object to the question on the ground that it is based upon an assumption which has not been established, because the witness has not said any such thing.

A No, sir, I don't believe that I testified to that.

Q Did you testify as follows: "Q. Therefore, the difficulties, if any there are, with respect to these inspections of the Collector and the chiefs of division incident to these decisions to which you have referred are insignificant", and did you answer as follows: "A. From the point of view of accounting, they are insignificant, in view of the fact that it is

not our duty to make complete audits of the entries which appear in the books, but only to decide whether or not an entry should be included for the purpose of assessment of taxes". Did you so testify?

MR. FELIX: I wish it understood that I object to all questions which involve the wisdom, propriety or convenience of Act No. 2972, for the reasons heretofore stated.

A Yes, sir, and I referred to the Collector of Internal Revenue.

Q Did you also refer, and does your answer also apply to the chiefs of division of the central office?

A No, sir.

Q The former question and answer that I have just read expressly included the chiefs of division. Now, if you want to modify your answer, go ahead.

MR. FELIX: I ask that that answer to which Mr. Gibbs refers be read.

(The answer referred to was then read.)

MR. FELIX: I object to the question on the ground that it is based upon an assumption which is not established in the former answer to which reference is made. I refer to that answer itself, which is the best proof.

MR. GIBBS: I wish to warn the witness that the answer, which I have just read to him is not the only answer he made on the subject, and that he has absolutely committed himself to the statement that no original inspections are made by any of the chiefs of division nor by the Collector, and he has placed chiefs of division in exactly the same status as the heads of the office so far as revisions of books are

concerned, and I therefore ask the witness, in the event that he now claims that the chiefs of division take part in any revisions other than those for the purpose of deciding the controversies heretofore spoken of, or for the purpose of doing anything else, or of doing anything further than the heads of the Bureau themselves do, in the way of revisions—I should like to have him so testify.

MR. FELIX: The admonition which forms a part of the beginning of that statement is wholly unjustified, and if the opposing attorney desires to refer to an answer, the witness has a right to be advised specifically as to what answer he is referring to. The answer to which he refers is composed of two parts—

MR. GIBBS: To cut short the objections and speeches of of the Fiscal, I withdraw the question.

MR. FELIX: The one which refers to the fact that neither the heads of the Bureau of Internal Revenue nor the chiefs of division are obliged to make revision of books and the other which refers to the duties of the chiefs of division as compared with the duties of the Collector of Internal Revenue, which are absolutely different. All the question and statement of our opponents are filled with unjustified insinuations.

Q Do the chiefs of division make any revisions other than or different from those made by the heads of the office?

A The duties of the chiefs of division are distinct from those of the Collector, who, in the majority of cases solely decides upon the legal aspect of a controv-

ersy, as to whether an entry should or should not be included for purposes of taxation.

Q Does the Collector or do the chiefs of division make original inspections of books of account?

A Neither the Collector of Internal Revenue nor the chiefs of division make original inspections; they only make inspections which are necessary in connection with a decision upon some difference, or when it is suspected that an incorrect inspection has been made by the examiners or agents.

Q And those revisions in the case of the books of Chinese merchants are made by means of interpreters or translators?

A In the inspection of books of account written in Chinese, yes, it is by means of interpreters.

Q And does the fact that you have to employ Chinese accountants or interpreters to make those translations for you constitute a difficulty of any importance?

A Yes, sir, by reason of the difficulty of obtaining competent personnel.

Q So that if you have made any statement contrary to this on that subject, you have since changed your mind, have you?

A I would like to have counsel indicate which answer of mine he refers to.

Q Then you wish to state now that even in those matters of revisions to determine the legal aspects of controversies between the merchants and the inspectors, the difficulties of translation are so great that they really interfere with your revisions?

A During my experience in the Bureau of Internal Revenue, I have often found it necessary to look into or

inspect books bearing upon matters in controversy, to determine the character of the entries in dispute. With reference to differences found in the books of the Chinese, naturally we have to depend upon the translations that are given us.

Q And the difficulties which arise from having to rely upon translations are so great as to interfere with the efficiency of your revisions, are they not?

(The witness did not immediately reply.)

MR. GIBBS: I wish it to appear that the witness is studying the question.

A I have a right to study and understand a question thoroughly before I answer. I believe so, for the reason that I have no means of verifying the translation.

Q Even though those revisions that you make are not revisions of detail, and refer not so much to the figures entered in the books, but rather to the technical and legal phases of a question, nevertheless the difficulties of having to rely upon translations are such as to render your revisions inefficient, in your opinion?

A To determine as to the legal phase of a controversy, it is necessary that one know the true nature of the entry which is the basis of the dispute, and I could cite—if the court would permit me — some cases in which the Chinese merchants have differed with the Chinese accountants with respect to the nature of an entry, one saying that it is outgo and the other saying that it is income.

Q But can't you ascertain the truth of the matter by means of the best Chinese accountants which you have?

A There is a technical aspect of the Chinese system of accounting—at least in this case which I can cite,

the taxpayer differed with the accountant in the office.

Q There are very distinct differences between the system of keeping books in Chinese and the system of keeping them in other languages?

MR. FELIX: I object to the question on the ground that the witness has not presented himself here in the capacity of an expert in bookkeeping.

A I know nothing of Chinese bookkeeping, inasmuch as I don't speak Chinese and have had no occasion to study it.

Q Let's go into greater detail with respect to this last answer which you made: what is there in the books of account of the Chinese which makes it so difficult to distinguish between outgo and income?

A I don't remember exactly the reason for the difference. but I am sure that while our accountant considered that an entry was an entry of sales made by the merchant, the merchant maintained that they were not sales, but that they were a payment which he had made to another merchant.

Q And which of the two was right?

A The matter is still pending decision.

Q And due to the difficulties of the system of translation in the matter of accounting, you have not been able to inform yourself as yet as to which one was right?

MR. FELIX: I object to the question on the ground that it is based upon an assumption not established in the record. The witness has only tsetified as to one concrete case.

MR. GIBBS: I am referring to that concrete case.

MR. FELIX: Then the question cannot be put in that general form in which you put it.

A In that case to which I have referred, it was not possible for me to make a definite decision—to determine whether our accountant was right or the taxpayer was right.

Q Do you know anything of bookkeeping in any language?

A I know a good deal about bookkeeping by reason of the fact that I was employed for a long period of time in the provincial treasurer's office.

Q But you have never taken a course in accounting?

A No, sir.

Q Therefore, in revising books of account, you must in any event rely upon some accountant to give you the details?

A No, sir, for the purpose of determining as to an entry, I believe I have sufficient knowledge.

Q Well, to determine whether this entry was a collection or a payment, did you not ask the translator for an exact translation of the entry?

A Yes, sir, I asked for a translation of the entry. and according to taxpayer the translation is incorrect.

Q Then the only difficulty in determining whether it is a collection or a payment is due to the translation; isn't that so?

A I can't say whether it is due to the translation for that reason, that my accountant maintains that he translated the entry correctly, while the merchant maintains the contrary, and as I can't verify the truth of what they say, I can't decide it.

Q When you have an inspector or an accountant to make

translations, don't you accept his word as against the word of the merchant?

A No, Sir, in those cases in which the result obtained by our accountant is disputed, no.

Q In case of a dispute between a merchant and one of your accountants, can't you supply another accountant to determine which one is right?

A Yes, sir, we apply to other accountants.

Q In short, if the translation of the Chinese were correct, then there would be no difficulty in making the revision.

A If the result obtained by the acountant is not disputed by the taxpayer, I believe not.

Q But accepting as correct the translation, then there is no difficulty in these revisions which are made?

A Yes, sir, there is always this difficulty, that it is not possible to supervise properly the work of these accountants, in cases there should be bad faith on the part of one of our accountants.

Q And if in cases as small as these you encounter obstacles in the efficient revision of the books, what would you say as to the difficulties which a Chinese merchant would encounter in informing himself as to the contents of books kept in a language as to which he has no knowledge?

MR. FELIX: I object to the question on the ground that the two cases are not the same.

A To what extent it would be difficult for the Chinese to keep informed as to their transaction in case the books were kept in English, Spanish, or any local dialect, I can't state exactly, but I consider that there would be less difficulties, in view of the fact

that the majority of the Chinese merchants in the Philippines have resided here for many years and that they speak English, Spanish or some local dialect.

Q But upon the assumption that many Chinese merchants cannot read or write any language other than Chinese is it your opinion that there is less necessity for the Chinese merchant to inform himself as to the contents of his own books than there is for the Collector of Internal Revenue to inform himself as to the contents of the books for purposes of revision?

MR. FELIX: I object to the question on two grounds: First, because the words "many Chinese merchants" employed at the beginning of the question refer to a relative term, as it is not known even approximately to what number of Chinese merchants he refers; and second, the question assumes a fact which has not been admitted by the witness and which does not appear in the record.

A Assuming that those cases existed, the Chinese would have the advantage, because they could avail themselves of the services of public accountants, duly registered, to inform themselves of the contents of their books, or as to any doubtful point in connection with their books.

Q Do you care to answer me as to whether, in your opinion, as a fair administrator of the Bureau of Internal Revenue, it is as necessary that the Chinese merchant inform himself of the contents of his books as it is that the Collector of Internal Revenue inform himself of the contents of those same books?

A I believe so, yes.

Q And according to your penultimate answer, the Chinese

merchant would always have at his service competent public accountants who would make those translations for him?

A Not necessarily.

A Are there many Chinese public accountants in the Philippine Islands that you know of?

A I don't know of any registered Chinese public accountants.

Q Of what kind of accountants would you have the Chinese merchants avail themselves in order to keep themselves posted as to the contents of their books if they were kept in some language unknown to them?

A It would depend upon the selection that they would make of the person in whom they had the most confidence.

Q What persons are there in the field from whom to make that selection—what people are there available from whom the Chinese merchants could make a selection for that purpose?

A Do you refer to public accountants, or to mere bookkeepers?

Q Well, you have referred to the ease with which the Chinese merchants could inform themselves of the contents of their books by means of public accountants: isn't that so? Explain how you would suggest that the Chinese merchants inform themselves as to the contents of books kept in some language unknown to them.

A Referring to the answer that I gave to a former question, I stated that the majority of the Chinese merchants, due to the fact that they have been located in the country for a long time, understand Spanish,

some of them English, and the local dialect of the place where they do business, and therefore, if they desire to know the contents of their books, *it would be sufficient for them to have the books read to them if they don't know how to read.*

The hearing was then, at 4:40 o'clock p. m., continued until Monday, December 17, 1923, at 2:30 o'clock p. m.

Monday, December 17, 1923.

The hearing was continued at 2:30 o'clock p. m., the Commissioner, the attorneys for both parties, and the reporters being present.

Juan Posadas, Jr., the witness under examination at the time of adjournment of the previous session, resumed the stand and testified as follows:

CROSS-EXAMINATION BY MR. GIBBS (Continued:)

Q Then, as I understand you, in your opinion as an expert upon the necessity of enforcing Act No. 2972, the Chinese merchant may sufficiently inform himself of the contents of books of account kept in a language unknown to him by having his foreign bookkeeper read the books in the language in which they are kept.

MR. FELIX: We object to that part of the question which refers to the witness as an expert with respect to the necessity of enforcing the provisions of Act No. 2972. We have always maintained, and we again maintain, that it is within the province of the legislature only to determine as to the necessity or wisdom of a law, and this witness cannot be nor has he been presented as an expert upon that matter.

A Yes, sir, for the reason that the Chinese merchants intervene in all their transactions.

Q Referring to the objection just made by the Fiscal, do you agree with him that you are not an expert on the subject of the necessity of the enforcement of Act No. 2972?

A I can testify only from the point of view of the convenience of the Bureau of Internal Revenue, which has charge of imposing and collecting the internal revenue taxes.

Q And therefore, upon the subject of the enforcement of Act No. 2972, as far as your office is concerned you consider yourself an expert, notwithstanding the suggestion to the contrary by the fiscal in his last objection?

MR. FELIX: I object to the question, first, because it is based upon a false assumption; we have never made any suggestion; in the second place the question of whether a person is or is not an expert in any matter does not make it incumbent upon that person to so state, but it is rather incumbent on the court so to find. Therefore, I object to the question.

MR. GIBBS: It is very interesting to find out why the fiscal thinks we are carrying on this hearing.

MR. FELIX: I will answer frankly by stating that that is a question that should be answered by the person himself who propounds it, and the reason is simple, knowing, as he does, that our contention has always been that nothing which involves the necessity, convenience or wisdom of a law can be decided by this supreme court, and this being so, and all the evidence presented by the petitioners being for the purpose

of establishing what we believe has not been established and cannot be established, to wit, that that law is unnecessary and inconvenient, it is up to the attorney for the petitioners to say why all these hearings are being held.

A It all depends upon what meaning is embraced by the word "expert." If you refer to the needs of the Bureau of Internal Revenue, I believe I can testify authoritatively.

Q And in your opinion, it would not be necessary for the Chinese merchants to have any books of account kept in Chinese characters, so that they could inform themseves as to their business by consulting their books?

A I can't say, because all that depends upon the convenience and necessities of the business or the merchant himself.

Q And you know nothing about the necessities of a merchant in that regard?

A No, sir, inasmuch as that depends upon the merchants themselves.

Q Well, you think that a Filipino bookkeeper on a salary of ₱100.00 to ₱200.00 per month would be so honest and reliable that the merchant could simply deliver himself and all of his business into the bookkeeper's hands, take his word for the contents and correctness of the books, and if he wished to find out anything about the contents of the books, let the bookkeeper read the books to him?

MR. FELIX: I object to the question on the ground that it is based upon an assumption not established in the

record, which is that the honesty of an employee is in direct proportion to the salary which he receives.

A I believe that a merchant would never be so lax as to depend entirely upon his bookkeeper to carry on the accounting of the business. Ordinarily, a merchant would have to exercise supervision in order to determine whether his books are being kept in a proper manner or not.

Q How would the Chinese merchant, who knows no other language than Chinese, proceed to supervise the keeping of his books in a language unknown to him?

A I don't believe that the majority of the Chinese merchants in the Philipines are wholly ignorant of Spanish, English or some local dialect, so that they would not be able to exercise due supervision of the manner in which their books of account are kept.

Q But even supposing that the law is not merely for the protection of the majority, but also for the protection of the minority, how would those of the minority proceed who did not have a sufficient knowledge of any language other than their own to inform themselves as to the contents of their books and to supervise the accounting end of their businesses.

A I don't believe there exists in the Philippine Islands any Chinese business house in which there are not one or two who know English, Spanish or some local dialect.

Q Even to the point of reading and writing it?

A I believe so.

Q So that there is not even the minority of which we have spoken?

A It is very possible that there are some merchants who do not know how to read or write, but among their

Chinese employees to whom I refer there will always be one or two who can read English, Spanish or some local dialect.

Q They would be good accountants for the main office of the Bureau of Internal Revenue, would they not?

MR. FELIX: I object to the question on the ground that it is indefinite.

A Everything would depend upon the qualifications that they possess.

Q Kindly answer my question: based on the hypothesis that there is such a minority, how would they inform themselves of and supervise the accounting end of their business?

MR. FELIX: I make the same objection that I make to the hypothetical question which was submitted to the court for decision, and anticipating that the same decision will be handed down, I wish to enter my exception.

A I believe that if that minority exists it will not be easy for their bookkeepers to deceive them, inasmuch as those merchants who form that minority know sufficient about the transactions in their respective businesses to make it difficult for the bookkeepers to increase or decrease the amount involved in a given transaction without the merchants themselves becoming aware of it.

Q So that, accepting that principle as a basis, in your opinion no books of account are necessary at all, so far as the successful conduct of business by the merchants is concerned?

A The matter of books of account for the business that he is conducting depends upon the merchant himself.

Q Do you think that a merchant would be any better off with books of account of the contents of which he could not inform himself than he would be without any books of account at all?

A I believe a merchant who keeps books is in better condition than one who does not keep books.

Q Even though he were unable to ascertain the contents of the books?

A Yes, because the merchant can obtain a balance sheet showing the condition of his business.

Q You think a merchant would be better off to have his books kept in such manner that he would have no knowledge of their contents than he would be to conduct his business without any books at all, do you?

A As I have stated in my answer to the former question, a merchant who keeps books of account is in a better situation than the one who does not keep any kind of books, because in case of any discrepancy in his business he can easily avail himself of the services of other accountants in whom he has confidence to inspect his books, and as they are in a language comprehensible to the immense majority of those who reside in the Philippine Islands, it would not be very difficult for him to inform himself adequately of the contents of his books.

Q If the entries in a Chinese merchant's books should be found to be false upon inspection by the Bureau of Internal Revenue, whom would the bureau hold responsible for the false entries?

MR. FELIX: I object to the question on the ground that it does not appear therein as a major premise who fal-

sified the books. It all depends on who committed the falsification.

Q So that if you were enforcing Act No. 2972, you would not exact from the Chinese merchants correct books of account?

A The only thing that concerns the Bureau of Internal Revenue is to see that all taxes are paid. It might happen that the entries made of the items subject to tax might be correct, while the rest of the books of account might be incorrect, and in such case the only thing that would interest us would be to know that all taxes due were paid.

Q Will you answer the question, whether or not in the enforcement of Act No. 2972 you would exact from the Chinese merchants the keeping of correct books of account, whether they knew the contents of the books or not?

A Yes, sir, so far as refers to the entries which indicate sales and other transactions which have relations to the payment of taxes.

Q If the Chinese merchant kept a complete set of books in some language unknown to him, how would you distinguish between the books that should be kept correctly and those which might be kept incorrectly, to satisfy the demands of the Bureau of Internal Revenue? In other words, which books would you have kept correctly and which might be kept incorrectly?

MR. FELIX: I object to the question on the ground that it is based upon the assumption that the witness has stated that the books might be improperly kept, which is not true.

A I have not said that any of the books could be kept incorrectly.

Q Assuming that a Chinese merchant who knows no language other than his own should be compelled to have his books kept by a Filipino bookkeeper in Spanish or English, how would you expect him to know whether they were kept correctly or not?

MR. FELIX: I object to the question on the ground that it is based upon an assumption not established in the record, which is that the Chinese merchant would be obliged to employ Filipino bookkeepers.

A That would depend upon the merchant himself. I desire to state here that the Chinese merchants pay their taxes to the government upon the basis of returns made in English and Spanish, and I believe that in this respect the Chinese have not had much difficulty in filing those returns.

Q You think that you have answered the question fully now?

A According to my knowledge and belief, yes.

Q Will you answer that question, or will I have to ask you a dozen questions?

A I have answered the question already, and the answer can be read.

Q You haven't made a statement that even referred to an answer. If a Chinese merchant with no knowledge of any language other than his own should be compelled to keep his books of account in English or Spanish by using a Filipino or any other foreign bookkeeper, how would the Chinese merchant, in your opinion, be able to inform himself as to the contents of his books and the status of his business?

MR. FELIX: I object to the question on the grounds formerly stated, and on the further ground that the question was answered when a former question was asked. If there is any doubt about that, let it be read.

A I believe they can inform themselves in the same manner as they now inform themselves as to the correctness of the tax returns which they file, some of which they make under oath.

Q And those are made by means of the employment of agents who devote themselves to the preparation of reports of that kind, are they not?

A I don't know how they prepare them. What I said was that they filed them in the office in English or Spanish.

Q What officials in the provinces are charged with the prosecutions for infractions of the Bureau of Internal Revenue regulations?

A The provincial fiscals.

Q If the owner or owners of a Chinese store or tienda in the provinces were convicted and sentenced to two years' imprisonment and a fine of ten thousand pesos, and if he were unable to obtain bail pending appeal, what, in your opinion, would happen to his business?

MR. FELIX: I object to the question on the ground that it is wholly immaterial and impertinent, and on the further ground that the question is entirely outside of the field of the direct examination, and also because it refers to hypothetical cases which are not related and which cannot in any way be related to the matter at issue.

A I don't know.

Q How many Chinese accountants or inspectors would be required, in your opinion, to inspect the books of the Chinese merchants of the Philippines to the same extent as the books of the other merchants are inspected?

MR. FELIX: I object to the question on the ground that no foundation has been laid for it.

A I have not made any study to enable me to determine the number of Chinese accountants that would be required.

Q Has that subject ever occurred to you before?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A Upon my arrival in the Burreau of Internal Revenue, I believe that I considered the necessity of employing more Chinese accountants, but we nearly always encountered the difficulty of not being able to find competent material for the work.

Q Will you answer the question, Mr. Posadas, whether the subject of how many Chinese accountants would be necessary to properly inspect the books of Chinese merchants ever occurred to you before this examination?

A I believe I have answered that question.

Q So that previous to this examination you have studied the problem of how many Chinese accountants would be necessary to make the inspections of the books of the Chinese merchants?

A Studied it, no.

Q Well, did you ever make any calculation on the subject?

A No, sir; I don't remember exactly with whom I discuss-

ed the necessity of employing more Chinese accountants.

Q Well, at that time did the additional number that you thought might be necessary occur to you?

A No, sir.

Q So that, as a matter of fact, you never took enough interest in the question of employing additional Chinese accountants to make the slightest calculation as to the number that would be required for the purposes of the inspection of the books of Chinese merchants in the Philippine Islands?

A In the first place, the appropriations of the Bureau of Internal Revenue are limited in the appropriation bills, but whenever a vacancy has occurred in the field forces of the Bureau, we have tried to employ Chinese accountants whenever we could find a person competent to occupy the position.

Q I think you promised sometime ago that you would ascertain and be prepared to answer as to what number of Chinese accountants you are limited to by your appropriation.

A I have no objection to producing that.

Q But don't you know approximately how many you are permitted to employ?

A The exact number of Chinese accountants stated in the appropriation of the Bureau of Internal Revenue is very limited, but that does not prevent us from employing Chinese accountants, paying their salaries out of other appropriations for agents or assistant agents.

Q What is this limited number of Chinese accountants which you are permitted to employ?

A I can't state the exact number at this moment.

Q Approximately?

A I would have to see the appropriation bill first before I could give you a categorical answer to the question.

Q And the number has been the same ever since you have been in the office?

A No, sir, I believe there have been increases since I arrived there, if my memory is correct.

Q Will you please bring that data when you appear here tomorrow afternoon?

MR. FELIX: I object, because that is a matter which appears in the law itself—it is something that can be ascertained by looking at the law.

A I have no objection.

Q What efforts have you made to increase the staff of Chinese accountants—or have you made any efforts?

A The selection of the field force of the Bureau is a matter that is in the hands of the chief agent, under whose supervision they work.

Q What is his name?

A The present chief of that division is *Jacinto Kamantigue.*

Q In your capacity as administrator, or acting administrator, or assistant administrator, of the Bureau of Internal Revenue, you have made no effort to increase the staff of Chinese employees?

A I have given instructions to the chief agent to the effect that whenever he finds a competent Chinese accountant, he is to employ him if any vacancy exists in his personnel.

Q Have you any knowledge of how many vacancies have existed for Chinese employees at any time during your

employment or connection with the Bureau of Internal Revenue?

A I can't state the number, because changes frequently occur in the office.

Q Are there any vacancies now that you know of for Chinese employees in the Bureau of Internal Revenue?

A I can't state whether there is any vacant position in the office now or not.

Q So that, according to your best information and belief, there are no such vacancies?

MR. FELIX: I object to the question on the ground that the witness has not stated any such thing.

A I can't state whether there is any vacant position in the office now or not.

Q Do you know of any vacancy for Chinese employees in the entire service of the Bureau of Internal Revenue?

MR. FELIX: I object to the question on the ground that it was included in the former question and has been already answered.

A I can't state that there is, but a few days ago I dispensed with the services of a Chinese secret agent, and that position can be filled by another as soon as we find a person available for it.

Q Referring to the Chinese employed in accounting or to vacancies among the accountants, is there any vacancy now in the entire service, as far as you know?

A As I have stated in my answer to the former questions, I can't state at this moment whether there are any vacancies or not.

Q Then, so far as you know, there are no vacancies for Chinese accountants in the service?

MR. FELIX: I object to the question upon the same grounds.

A I have stated what I know with respect to the only vacancy that there is for an employee, and that is a vacancy for a secret service agent.

Q But he is not an accountant, is he?

A It is only a nominal designation and he really could discharge the duties of an accountant in the inspection of books.

Q Did the Chinese employee who formerly filled that position do accounting work?

A I can't state definitely, in view of the fact that this work is under the immediate supervision of the chief of secret agents of the Bureau, but I can say that my Chinese secret agents also take part in the inspection of books of account.

Q All right, eliminating this Chinese detective whom you say you discharged, do you know of any other vacancies in the service of the Bureau of Internal Revenue for Chinese accountants? Yes, or no?

A As I have stated in my former answers, the Bureau of Internal Revenue has at its disposal other positions wherein Chinese accountants can be located, outside of those provisions of the appropriation act referring to Chinese accountants for the office. Therefore, I can't answer at this moment whether there are any vacancies for Chinese accountants or not.

Q Will you answer my question yes or no, whether you know of any vacancy in the Bureau of Internal Revenue for Chinese accountants outside of this possible exception of the detective?

A I believe I have fully answered that question.

Q And you refuse to further answer it, do you?

A I don't see any necessity of answering it again, having already answered similar questions.

Q This question is susceptible to an answer of yes or no: do you know of any vacancy in the Bureau of Internal Revenue service for a Chinese accountant other than this position left vacant by the discharge of a detective—yes or no?

MR. FELIX: Will the reporters please read the last few questions and answers?

(The reporters complied.)

MR. FELIX: I object to the question on the ground that the witness has answered it several times, as the record shows, to the effect that he doesn't know what number of vacancies there are in the Bureau, and as he has answered it several times, he is not obliged to answer it again.

Q What I wish to find out is whether you know that there is one vacancy, not how many vacancies there are.

A If my former answers don't satisfy you, I am willing to answer again, but I believe I have answered that question fully when I stated that I could not give the exact number of vacancies.

Q What I want to know is whether you know of a single vacancy, not how many vacancies.

A I have stated that at this moment I do not know.

Q What is this man's name that is in charge of that branch of the service?

A Jacinto Kamantigue.

Q And he has not reported any vacancies to you?

A At the end of each month the chief clerk gives me a report of all vacant positions in the Bureau of Internal Revenue, including those which occur in the pro-

vinces, and at this moment I can't say whether or not some of the vacancies reported last month have been filled.

Q Will you bring me at the hearing tomorrow a copy of the last two monthly reports on that subject?

MR. FELIX: Although it is wholly immaterial, I don't believe the witness has any objection unless it is a confidential office matter.

A I will have no objection to bringing a copy of that part which refers to vacant positions.

Q Will you do so?

A Yes, sir.

Q When you receive reports of vacancies in the service, how do you go about filling them?

A If the vacancy has occurred in our provincial personnel, the supervising agents undertake to fill them, and if the vacancy occurs in Manila, or in case they can't find in the provinces persons to fill the vacancies occurring in the provinces the chief agent undertakes to fill the vacancy.

Q And do you discuss the subject of filling these vacancies with the chief agent?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A Only in cases of important positions.

Q Have you in any manner ever intervened in any effort to employ Chinese accountants?

A Yes, sir, there are times when the chief agent receives some request for a position, or a person is found to fill a position, and he customarily discusses with me the qualifications of the person and the position or the division to which he should be assigned.

Q How many instances of that kind do you remember during the period of your connection with the central office of the Bureau of Internal Revenue?

A I don't remember the number of times.

Q Do you remember the circumstaces of any single occurrence of that sort?

A Yes, sir.

Q When did it happen?

A If I remember correctly, it happened last month, when a Chinese accountant sought a position in the office, and at the beginning of this month, when another Chinaman also asked for a position in the office.

Q And who were those applicants?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A I can't state the names of those two persons.

Q Nor where they live?

MR. FELIX: I enter the same objection.

A I can't state that, either; that appears in the records of the office—their addresses.

Q And you refused them employment because you had no vacancies?

A No, sir, I caused them to be employed, one of them to fill a position as one of our regular personnel, and as to the other, I employed him out of my discretionary funds.

Q So that very recently you have employed two additional Chinese accountants, have you?

A Yes, sir.

Q Have you personally ever made any effort to find additional Chinese accountants without reference to those who may have solicited employment from you?

A As I have stated, the chief agent undertakes to find persons who are to fill vacant positions in the field division of the service, and it would be physically impossible for the head of the office to devote his time to that work when other and more important work requires nearly all of his time.

Q Do you realize that that long answer that you have made could have been better made by the word "no".

MR. FELIX: The attorney for petitioners has no right to tell the witness how he may answer. Otherwise, he would be a witness for the petitioners and they could get exactly the answers which they desire.

Q In order to save time, will you answer yes or no the question whether you have made such efforts to find additional Chinese accountants for the service of the Bureau of Internal Revenue?

A Directly, no.

(The question was then repeated:)

Q Have you personally ever made any effort while you have been in the service of the Bureau of Internal Revenue to find additional Chinese accountants?

A I believe I have answered the question; I stated, "Directly, no."

Q I have not employed the word "directly" or the word "indirectly" in my question; I have asked you whether you personally have ever made any effort to employ additional Chinese accountants for the service of the Bureau of Internal Revenue?

A As I have stated in my former answer, I remember having discussed with the chief agent the necessity for them, and it would seem that to a certain extent this was an effort to increase the number of Chinese accountants that we have in the office.

Q Have you personally ever searched for any Chinese accountant?

A Certainly, I haven't gone out personally to find Chinese accountants.

Q Therefore, you personally have no knowledge as to the supply of efficient Chinese accountants in the Philippine Islands?

A No, sir.

The hearing then, at 4:30 o'clock p. m. was continued until Wednesday, December 19, 1923, at 2:30 p. m.

Wednesday, December 19, 1923.

The hearing was continued at 3:00 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Juan Posadas, Jr., the witness under examination at the time of adjournment of the previous session, resumed the stand and testified as follows:

CROSS-EXAMINATION BY MR. GIBBS (Continued:)

Q Have you brought with you the data which I requested at the last hearing?

A Yes, sir, I have. (The witness producing a document which was marked for identification as Exhibit Q.)

Q Is this Exhibit Q a memoradum of those data?

A Yes, sir.

Q Referring to this memorandum relative to vacant positions, and to page one of Exhibit Q, was there any vacancy in the position of Chinese accountant among those mentioned on that page?

A A vacancy as Chinese accountant, no sir.

Q A vacancy for any Chinese employee?

A So far as I remember directly, in October and Novem-

ber, no vacancy occurred in the positions occupied by Chinese.

Q Referring to the second page, please be good enough to explain to the court each one of the data which appear on that sheet.

A The first column indicates the year; the second the number of agents; the third the number of accountants; the fourth, the income tax examiners; the fifth, the assistant agents; the sixth, the assistant examiners; the seventh, the Chinese accountants; the eighth, the drug inspectors; and the ninth, the total of each one of these columns.

Q Referring to this column of Chinese accountants, are these the only employees on this sheet for Chinese?

A No, sir.

Q In what other column are there any Chinese employees?

A As I have testified heretofore, Chinese may also occupy positions as agents or assistant agents, and some of them are employed, their salaries being paid out of the discretionary funds of the collector.

Q But the agents are not necessarily accountants?

A In these latter years it has been required that those who occupy those positions must be at the same time accountants, or must have a knowledge of accounting.

Q To what years do you refer when you say "These latter years?"

A I can only testify as to the time since I arrived in the Bureau of Internal Revenue, in 1920.

Q Referring to the employees for the year 1923, you have five Chinese accountants who appear in that column for that year, 1923?

A Yes, sir; all those positions are filled.

Q And among the assistant agents, how many Chinese are there?

A If I remember correctly, we have one, and another who is paid out of the discretionary funds.

Q What is the total number of Chinese employees which you have had for the year 1923?

A Seven.

Q And during these five years from 1919 to 1923, those positions of Chinese accountants have always been filled?

A I can't state definitely now; I would have to consult the records of the office.

Q You don't remember of any vacancy among the Chinese accountants during those years?

A No, sir, I don't remember now.

Q And during those years has no appropriation been made for a greater number than that indicated on this sheet?

A The positions which appear on this sheet (the witness indicating page two of Exhibit Q) are the positions which appear in the appropriations granted to the Bureau of Internal Revenue, but I don't remember at this moment if these positions represent those which were asked for during the year. In these last two years I have asked for an increase in the personnel of the office, but for reasons of economy, the legislature has cut down the number of positions which I asked for.

Q But during these two last years have you not asked for a greater appropriation in order to employ a greater number of Chinese accountants?

A I don't remember.

Q But don't you remember having asked in writing for an appropriation for more of them?

A I remember having—

Q I only wish to know whether you have written any letter upon the matter; I do not want the contents nor your recollection as to the contents of any letter, but I wish to know whether it has been written in order that I may then ask that it be produced.

A I believe it would be better to consult the estimates which were delivered to the Secretary of Finance, in order to ascertain the number.

Q Can you bring this estimate for the hearing tomorrow afternoon?

MR. FELIX: I am going to ask that there be no hearing tomorrow, but these are papers which we have no objection to furnishing, if they are to be offered as evidence.

MR. GIBBS: The attorney for the petitioners has the right to ask for documents, without the necessity of offering them in evidence. If I don't offer them, you can do so.

A I can't promise to do it in so short a time, because it will be necessary to look them up and copy them and that requires time.

Q The only point is that if it should turn out that no request has been made for more Chinese accountants, you could so state in so many words, without the necessity for anything more?

A For that purpose it would be necessary to consult the estimates which have been submitted in order to

see whether any additional positions for Chinese accountants have been asked for.

MR. GIBBS: I offer in evidence Exhibit Q.

MR. FELIX: No objection.

Q Mr. Posadas, is it not true that for the successful conduct of their businesses, it is more necessary for the Chinese merchants to keep their books of account in a language comprehensible to them than it is for the employees of the Bureau of Internal Revenue that said books be kept in a language that they can understand.

MR. FELIX: I object to the question on the ground that it is based upon an assumption which has not been established, which is that the employees of the Bureau of Internal Revenue are interested in the success of the businesses of the merchants.

A That is a question of comparative values. According to my judgment, the merchant who personally carries out his transaction naturally is posted on what goes on in his place of business and I don't believe that for the success of a business it is necessary that the merchant himself be an accountant for the purpose of being able to make a detailed inspection of his books of account. The customary practice is that he make up a balance sheet periodically in order to determine the condition of his business. On the other hand, for the Bureau of Internal Revenue, for the very reason that it does not directly intervene in the transactions effected by the merchants, the inspection of the books of those merchants is more difficult.

Is it not true, Mr. Posadas, that a merchant, for the successful conduct of his business, must inform himself

and keep posted upon many more details of his business than are necessary for the inspection by the Bureau of Internal Revenue of books of account for the purpose of determining the taxes which such merchants should pay?

A Possibly a certain difference exists between the inspection made by the Bureau of Internal Revenue and the examinations which a merchant may make of his books of account. The object of the internal revenue is to determine if all the items which appear in the books of the merchant have or have not been included in his return for purposes of taxation.

Q Is it not true, Mr. Posadas, that the practice of inspecting the books of account of the Chinese by means of Chinese accountants has been followed by the Bureau of Internal Revenue in the Philippines for the past 20 years or more?

A To judge from the results of the inspections made by my bureau during my incumbency therein, I am led to believe that the inspections which were formerly made were superficial, in view of the fact that the bureau during these latter years has discovered large differences which were never declared for the purposes of taxation.

Q And all those differences appear in the books and records of the Bureau of Internal Revenue?

A Yes, sir.

Q You don't mean to say by your penultimate answer that the Bureau of Internal Revenue did not avail itself of the service of Chinese accountants in the examination of the books of Chinese merchants prior to your incumbency in the bureau?

A No, sir.

Q So that, according to your best knowledge, the Bureau of Internal Revenue has made use of Chinese accountants to inspect the books of the Chinese merchants during the last 20 years or more?

A I know that prior to my appointment to the Bureau of Internal Revenue the Bureau already employed Chinese accountants.

Q Or, in other words, long prior to your arrival in the Bureau the same system of inspection which is at present used had been followed?

A I can't say, because at that time I was not in the Bureau and I am not absolutely sure.

Q But you know nothing to the contrary?

A I have stated that, judging by the results of the inspections made in these later years, I am led to believe that formerly the examinations were made in a very casual manner and not in the careful way in which it is done today in order to check up the tax returns of the merchants.

Q Do you mean to say that the efficiency of inspections and collections of the Bureau of Internal Revenue has improved since the time when Mr. Nolting occupied the position of chief of that bureau?

MR. FELIX: I ask that the question be divided into two questions, because it includes both the inspections and the collections.

MR. GIBBS: I believe that they go together and that the one presupposes the other, because the faulty returns are discovered in the inspection.

A I can't state anything at this moment with respect to the revision and inspection of the books of account

of the Chinese merchants prior to my incumbency in the Bureau of Internal Revenue.

A You mean to say that during your incumbency in the Bureau of Internal Revenue the books have been inspected and the taxes have been collected from the Chinese merchants with greater efficiency than before?

A I would not presume to make any comparison, inasmuch as I don't know how the Bureau of Internal Revenue operated prior to my arrival there.

Q But you mean to say that the inspections were made in a casual manner prior to your incumbency?

A For the reason that in the revisions carried out in these latter years, differences have been found corresponding to former years, and many cases have come up of books formerly inspected in which, upon reinspection, such differences have been found.

Q Until what dates have those second inspections of books of account been made?

A It is very difficult for me to remember it.

Q That appears in the records of your office?

A Yes, sir.

Q In any event, for the last 15 years the Chinese merchants have represented less than one-seventh of the total number of merchants in the Islands?

A I can't testify as to that point because I have not studied it in any way.

Q I am not sure, but I believe that I called your attention, prior to the presentation of these data, to the fact that, considering the number of merchants of different nationalities, the volume of the sales made by each, and other details which appear in the bill of exceptions in the case of Young *vs.* Rafferty, you

stated, according to my recollection, that in your opinion the relative number of the different merchants has been maintained approximately the same from that time until now.

MR. FELIX: On this very point, I desire to call the attention of the Supreme Court to the fact that statistics are being prepared by order of this court and that they will show better than any other proof what the number is.

A With respect to the number of merchants, I believe that it has undergone a very pronounced change during the last fifteen years to which you refer. Now then I cannot definitely state if the same change took place in the proportionate volume of business done by all the merchants.

Q Which means to say that the total number of merchants probably has increased?

A Naturally, it has increased?

Q But what I am asking is whether this increase has been proportionate to the relative numbers which appear in this table. For example, if there were 10 Filipinos and one Chinese, the increase has been to twenty and two, respectively.

A I believe that the proportion of the increase on the part of the Filipinos and other nationalities, with the exception of the Chinese, has been greater.

MR. FELIX: I object to that question on the ground that it is immaterial from the moment when it was alleged in the answer and it was admitted that 60% of the business of the Philippine Islands is in the hands of the Chinese.

Q According to that table, in the year 1912 the Chinese

represented approximately one-seventh of the total number of merchants; isn't that true?

MR. FELIX: I object to the question on the ground that it is immaterial, because even though it be attempted to bring into the discussion the necessity for the law, the fact that the Chinese merchants represent one-seventh of the commerce done would lead nowhere.

A I would have to check up in order to know what proportion appears there. It is approximately that amount.

Q And during those fifteen years, the Chinese merchants have paid at least three-fifths of the taxes upon the total sales made by all the merchants in the Philippines?

A I can't say, in view of the fact that no statistics are kept in the bureau by nationality of the taxes collected, and I believe that this information will be available when the report is submitted which the court has ordered the bureau to prepare.

Q How could the representatives of the Bureau of Internal Revenue know, as has been admitted in the answer of the respondents, that two-thirds of the commercial business of the Philippine Islands is in the hands of the Chinese, unless they took as a basis the sales made by those merchants in comparison with the total sales made by all the merchants of the Philippine Islands?

MR. FELIX: I object to the question because the witness has not been called to testify upon that point and it was not the respondent, but his attorney, who filed the answer. Furthermore, if the petitioners allege

that fact and it is admitted by the respondents, the petitioners are not entitled to propound the question which they have just put.

A I cannot say anything as to that point.

Q You have stated in your direct examination that in the comparison of the results of the inspection of the books of some 470 Chinese merchants, you found a difference which amounted to more than P600,000 which had not been declared. The data upon which you based that answer appears in the books and records of the Bureau of Internal Revenue?

A Yes, sir.

Q And your statement was based solely on what appears in those books and records?

A Yes, sir.

MR. GIBBS: I move to strike out the answer of the witness which refers to the supposed result of the inspection of the books of account of 477 Chinese merchants, which answer appears on pages 9 and 10 of the transcript of the testimony of the witness given on the fifth day of December, 1923, on the ground that said testimony is not the best evidence, but that the best evidence would be the records and books of the Bureau of Internal Revenue; and on the further ground that said answer embraces a part of the data which the court, at the instance of the petitioners, ordered the Bureau of Internal Revenue to furnish, and the respondents are not entitled to introduce in this way an isolated part of that data which suits their convenience and to deprive us of all of such data which may be proper.

MR. FELIX: I object to the motion to strike out made by

counsel for the petitioners, for the following reasons: first, because the evidence is the best that can be produced in view of the fact that the Administrative Code and the Income Tax Law prohibit the revealing of secrets which relate to merchants in general, and therefore such books and records cannot be offered as exhibits in this case; second, because such answer in no way affects the statistics the preparation of which has been ordered by this Supreme Court, inasmuch as they refer only to the total amount of taxes paid by the Chinese merchants for the years 1918-1922, as well as the total of the taxes paid upon the sales of said merchants, and to the penalties for failure to pay such taxes within the proper time during those years.

MR. GIBBS: Availing myself of the suggestion made by my colleague, I also ask that the answer mentioned in my former motion be stricken out on the ground that the same is a revelation prohibited by law, and made by the Collector of Internal Revenue, and that if the law forbids the revelation of all of the data it likewise forbids the divulging of a part thereof which it may suit the interests of the respondent to give; and because the disclosure of the result of the supposed inspections of the books of account of 477 Chinese merchants is a violation of the said law which prohibits such action, that is, the revelation of secrets whether on a wholesale or a retail scale.

MR. FELIX: It would appear that the last statement of the attorney for the other side should not be answered, because the revelation to which the law refers is that which relates to what may affect every mer-

chant tax payer, and not to the result of various inspections made. We rely upon the law, which speaks for itself.

MR. GIBBS: We also rely upon the law, with the remark that it should not be permitted that 477 merchants be insulted by the mere fact that their names are not divulged.

MR. FELIX: I would like to know who those 477 merchants are who are being insulted?

MR. GIBBS: We have requested all the data, including the names.

MR. FELIX: The decision of the Supreme Court itself upon the point is the best reply.

Q Mr. Posadas, do you know of any Hindu merchant who keeps his books in his native dialect?

A Personally, I don't know one of them, but I believe some of them keep their books in their native dialects.

Q Do you know of any German or Frenchman who keeps his books in his native language?

A No, sir.

Q All of them keep their books in Spanish?

A I can't say.

Q Or English?

A I have not inspected the books of these merchants.

Q Eliminating the Chinese merchants, how many merchants in your opinion, keep their books of account in a language other than English, Spanish or some local dialect?

A I can't say.

Q Are there only a few cases?

MR. FELIX: The witness has stated that he does not know

and he can hardly testify in view of his former answer.

MR. GIBBS: I called the attention of the court to the fact that the fiscal is constantly suggesting to the witness that he refused to answer my question.

MR. FELIX: I am doing nothing more than warning the witness in order that he may not be imposed upon.

A I don't know.

Q You have no knowledge of any cases of merchants not Chinese who keep their books in some language other than English, Spanish or some local dialect?

A I know of Japanese, because I have been in Davao, who keep their books in Japanese.

Q Are they planters or merchants?

A Planters and merchants.

Q The majority of the Japanese keep their books in English or Spanish?

A I don't know, because I have made no examination of the books of the Japanese merchants.

Q The characters in which the Japanese keep their books of account are the same as the Chinese, although the words are different?

MR. FELIX: The witness is not competent to testify as to the Japanese characters; no foundation for it has been established.

A I can't answer that, because I don't understand either Japanese or Chinese, in order to be able to judge whether the characters are the same.

Q With respect to their appearance, do they appear similar?

MR. FELIX: I object on the ground that no foundation has been laid.

A Apparently, at least.

Q Outside of the Chinese merchants and of the few Japanese to whom you have referred, you have no knowledge of any merchant who keeps his books of account in any language other than English, Spanish or some local dialect?

A No, sir, except that on one occasion I remember having seen a book of a Hindu merchant which I believe was kept in his own dialect.

Q But did he not have books in English or Spanish?

A I don't remember having seen it, but as a general thing those merchants keep the Internal Revenue sales books.

Q And those sales books contain all the information which is needed by the Bureau of Internal Revenue?

A No, sir.

Q What other information does the Bureau of Internal Revenue require?

MR. FELIX: I object as being immaterial and impertinent to the case at issue.

A We also require purchase books.

Q And also books which show profits?

A For the purposes of the income tax, we naturally find it necessary to check up, not only the profits, but the deductions, such as expenses and other credits.

Q So that the requirements of the Internal Revenue, so far as the books of the merchants are concerned, include all the books that they keep?

A No, only two books, the purchase book and the sales book.

Q In what way can you verify the profits of the merchants without the other books of account.

A If they keep books, we compare them with the returns which they have filed.

Q In case the books of the merchants were limited, for the purposes of the enforcement of Act No. 2972, to the purchase book and sales book, how could the Internal Revenue determine the correctness of the supposed profits of each merchant?

A We could not check it up, but there would be a basis of comparison.

Q How would you be able to insist upon the collection of all the taxes if you were not able to ascertain definitely the profits of the merchants?

A So far as I know, nearly all the merchants keep books of account or notes of their transactions, and I don't remember having met with much difficulty with the merchants in that regard.

Q But I am speaking of the possibility that Act No. 2972 may be enforced and at the same time the books of the Chinese merchants be limited to a purchase book and a sales book. In that case, would not the Bureau of Internal Revenue be greatly prejudiced through lack of means to ascertain the profits subject to tax?

MR. FELIX: I object to the question on the ground that it appears to be contradictory; it first assumes that no books exist, or that they do not keep books, and on the other hand it admits that the purchase and sales books are kept.

MR. GIBBS: I call the attention of the commissioner to the fact that the fiscal is trying to give instructions to the witness as to the answer which he should give.

MR. FELIX: I desire to call the attention of the Honorable Supreme Court to the annoying attitude of the at-

torney for petitioners,, who is constantly arguing that we are giving instructions,—conduct which in our opinion is improper. Reference can be had to the last objection offered, in which nothing more has been done than to call the attention of the party propounding the question to the fact that it involves a contradiction, without influencing the witness in any way.

MR. GIBBS: After the instructions which you have received from the fiscal, do you wish to answer the question?

MR. FELIX: I desire to call the attention of the attorney for the petitioners to the fact that if he insists upon offending counsel for respondents by constantly stating that he is instructing the witness, which is false and without foundation, he will see that disciplinary action is taken; and I rely upon what appears in the record.

A The law itself would be the best answer for the question.

Q The Bureau of Internal Revenue could determine the net profits upon which the merchant should pay his income tax, without any other books of account than the purchase book and the sales book.

A No, sir.

Q So that, if as a result of the enforcement of Act No. 2972, many of the Chinese merchants were reduced to keeping only the purchase book and the sales book, due to their ignorance of any of the languages mentioned in this law, the Bureau of Internal Revenue would thereby be greatly prejudiced, would it not?

A I believe not, in view of the fact that the Bureau of In-

ternal Revenue is empowered by law to assess taxes on the basis of the best information available.

Q So that, in such case you would have to rely upon a mere guess to determine the profits?

A No, sir; as I have said, on the basis of the best information available.

Q In case you had no available means of ascertaining the profits, how would you proceed to fix them for tax purposes?

A According to the circumstances of each case.

Q And in that case the Chinese merchants who, through ignorance, would not be able to keep their books in any of the languages mentioned in Act No. 2972, would suffer the consequences of the arbitrary determination by the Bureau of Internal Revenue of the amount of taxes which they would have to pay?

A No, sir, because the law itself provides sufficient protection against the undue payment of taxes, whether as to amount or kind.

MR. GIBBS: I have finished with this witness with the exception of the presentation of the estimate of appropriations asked for.

The hearing was then, at 4:30 o'clock p. m., continued until Monday, December 24, 1923, at 2:30 o'clock p. m.

Monday, December 24, 1923.

The hearing was continued at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

M. E. Riepe, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A M. E. Riepe, 61 years of age, married, bookkeeper, living at 872 Calle Dart, Paco, Manila.

Q Handing you these documents, which for identification are marked as Exhibits 13-a, 13-b, 13-c, 13-d, 13-e, 13-f, 13-g, 13-h, 13-i, 13-j, 13-k, 13-l, 13-m, 13-n, 13-ñ, 13-o, 13-p, 13-q, 13-r, 13-s, 13-t, 13-u, 13-v, 13-w, 13-x, 13-y, 13-z, 13-aa, 13-bb, 13-cc, 13-dd, 13-ee, 13-ff, 13-gg, 13-hh, 13-ii, 13-jj and 13-kk, I ask you if you recognize them?

A Yes, I recognize them.

Q Why do you recognize them?

A Well, by the names of the firms, their location and their addresses—where they are located on the different streets, because I went there myself.

Q Have you had those documents, Exhibits 13-a to 13-kk, in your possession?

A I had them in my possession.

Q How did you come to acquire possession of those Exhibits 13-a to 13-kk?

A I got them right from the Chino tiendas; I got the certificates where I got those prices.

Q Were those documents, Exhibits 13-a to 13-kk, made in your presence?

MR. GIBBS: I object to the question as being leading and as not calling for the best evidence.

MR. FELIX: I withdraw the question, and will reword it.

Q Do you know who wrote what appears in handwriting on those Exhibits 13-a to 13-kk?

MR. GIBBS: I object to the question on the ground that

no foundation has been laid for the admission of such testimony.

A I presume it was the owner of the business who did it.

MR. GIBBS: You presume that?

A Well, I wouldn't know that. I went in and asked for the prices of different articles, and the Chino put it down on the paper, and I asked, "Are you the owner of this business?", and he said, "I am the chief; I am the manager." Some of them told me in Spanish and some in English. Some of them was going to write it in Spanish, and I wouldn't accept it—I wanted it in English—, and some of them wanted me to write it down, and I wouldn't accept that; and some of them told me they were the manager, and I told them I wanted prices and, they wanted to know why I wanted prices, and I told them I wanted to get the cheapest prices possible.

Q In whose presence was the matter written that is contained in those Exhibits 13-a to 13-kk?

A In my presence.

Q To what nationality did the persons belong who wrote those documents marked Exhibits 13-a to 13-kk?

A They were all Chinese.

Q When did you obtain those documents, Exhibits 13-a to 13-kk?

A Today is the 24th—I started in about the first or second of this month, say since the fifth of December, approximately. I couldn't give the exact date when I first went out on it, but it is since the beginning of this month, the beginning of December—the fifth or sixth, something like that. I don't know whether they put the dates on there or not; some of them have, I believe.

CROSS-EXAMINATION BY MR. GIBBS:

Q To what nationality do you belong?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A American.

Q American?

A I hope I am. I got twenty-five years and eight months military service to my credit, was brought up in Chicago,—that's my home town—I believe I am an American.

Q Where were you born?

A I was born in Germany.

Q I thought so.

A I came to the United States when I was five years old.

MR. FELIX: I object to this as being wholly immaterial, and I ask that the last question and answer be stricken out.

A I might say that I am a Filipino, now, because I am here twenty-three years.

Q Married to a Filipina?

A I am married here, yes, sir.

Q To a Filipina?

A Yes, sir, a Visayan.

Q A Visayan?

A Yes, sir.

Q How long have you been married?

A Twenty-one years.

Q Married in this country?

A In this country.

Q You live in the Visayas?

A In the Visayas, yes.

Q You came out as a soldier?

A I got twenty-five years and eight months military service to my credit. I could have retired—

Q I say, did you come to the Philippines as a soldier?

A I was first sergeant of H Company of the 1st Infantry in 1900.

Q You came over after the War was over, did you?

A In 1900. I went to Cuba on the first expedition, and then came over here.

Q I say, you came to the Philippines after the war was all over. Is that true?

A After what war—the World War?

Q The Insurrection.

A I got wounded over here.

Q You did?

A Certainly I did. Lieutenant Downs—Camp Downs was named after him—he was my Company Commander, and he was killed, and I was wounded while trying to help him. I was standing right behind him—

Q Where were you wounded?

A In Samar.

Q Where is your wound?

A In the knee. I could have retired in 1909 and I could have gone to the States, and I didn't want to go because I had a family over here, and so I didn't want to go. I was a fool—I could have retired over there and got $133.50 a month, and I could have retired as post commissary sergeant. Now I got nothing.

Q Did you remain in the Philippines during the World War?

A I was right here, yes, sir.

Q In whose employ were you when you obtained these papers which you pretend to identify?

A Nobody's employ. I am not working—I haven't been working for the last five months. I was working for the Manila Gas Corporation, and I just went in with Mr. Shlosser. I believe you know him, Judge.

Q For whose benefit did you obtain those papers?

A For our own benefit in opening a bookkeeping business for keeping Chinese accounts.

Q You and—

A Shlosser and myself.

Q You obtained those papers, Exhibits 13-a to 13-kk, to assist you in keeping the books of the Chinese?

A For the Chinese—and for the benefit of the Government also.

Q Oh, for the benefit of the Government?

A For the benefit of the Government, certainly, in regards to revenue.

Q Well, you were employed then by the fiscal, were you?

A I am not, no, sir; I am not employed by anybody.

Q Were you employed by Mr. Posadas?

A I was not.

Q By what—

A Mr. Shlosser is the man who asked me to go into business with him together, in the bookkeeping and accounting department for Chinese firms, to keep their books in English.

Q And you hoped that by obtaining this evidence and presenting it here, you would establish your reputation as a bookkeeper with the Chinese firms, did you?

A Yes, sir.

Q That was the purpose of obtaining these documents?

A Yes, sir, exactly.

Q You thought that by doing that you would ingratiate yourself with the Chinese firms?

MR. FELIX: I object to the question on the ground that it is wholly immaterial. The questions to be determined here is whether these documents, Exhibits 13-a to 13-kk, have or have not peen written by Chinese in the different Chinese houses whose names appear in these documents. All other questions are wholly immaterial and impertinent.

A That we could open some business in bookkeeping and accounting and keeping books for Chinese firms—if the law passes that the Chinese have to keep their books in English, that we would establish a business of our own and make a decent living.

Q I understand, your purpose was to compel the Chinese—

A Not compel.

Q Your purpose was to assist the Government in enforcing Act No. 2972, so that you would obtain an opportunity to keep the books of the Chinese firms?

A To keep books for the Chinese firms. If the law passes that they have to keep their books in English, we would like to get as many Chinese firms as we can and open an office by ourselves and keep their books in English.

Q And for that reason you got this man Shlosser—What are Shlosser's initials?

A Now you got me; I don't know, but I think it is William—I am not sure. He is an old-timer over here—his family is in the States now. He used to work for the Manila Egineering Company—he was bookkeeper with the Manila Engineering Company.

Q For that reason, you and Shlosser volunteered to act

as detectives for the purpose of obtaining this information, these Exhibits 13-a to 13-kk?

A No, sir, not as detectives, not by any means.

Q In what way did you expect Exhibits 13-a to 13-kk to assist you in obtaining work with the Chinese firms?

A The object is that we wanted to get as many Chinese firms as possible who didn't keep their books in English—who don't know English—, so that we could afterwards, if we do establish our business, that we could get them to make an agreement for us to keep their books, and assist the Government also in that respect.

Q In what respect?

A That the Government knows which Chinese firms do keep their books in English and which do not. Now, all these don't certainly not.

Q You mean to say that none of the Chinese firms whose names are mentioned in these papers, Exhibits 13-a to 13-kk, keep their books in English or Spanish?

A I couldn't say that—I couldn't swear to that; I don't know that, because I didn't see their books—certainly not, I wouldn't know that.

Q What was it you just got through saying?

A Well I just said that we wanted to find out what Chinese firms keep their books in English and what ones don't. Now, there is quite a number that couldn't even make out a list in English; they couldn't do it: there is quite a number of them.

Q Did you make a list of those who could not make out that list?

A No, I didn't I only got a list of those—that price list.

Q How long were you engaged in this canvass of the Chinese firms?

A Well, I said since the beginning of this month, the fifth or sixth. I don't remember the exact date when I first started in, when Shlosser asked me.

Q When did fou finish?

A Well, I got the last two the day before yesterday, or three or four days ago, the last two, two lumber companies out here the other side of Azcarraga.

Q And the great numbers of Chinese who were not able to write lists for you, did you make any note of their names?

MR. FELIX: I object to the question on the ground that it is based upon an assumption not established in the record, which is that there is a great majority of Chinese who are not able to make out invoices such as Exhibits 13-a to 13-kk.

A No, I didn't, but I can get the list if it is necessary, because I remember the places where I had been to get the price lists. I could go there again and get the names of the firms if it is necessary—I could do that again.

Q But you were not looking for the people who could not write the lists?

A No, I didn't check their names. I should have done that, I believe.

Q The purpose of your visits was to find out the people who could not keep their books in English or Spanish, so you could obtain employment with them?

A Exactly, so that—

Q And the people who could not keep their books in English or Spanish were precisely the people that you took no note of?

A Yes, that is true, I should have taken their names too,

but I can get them easy; I know which ones they are. I can go round there again, as far as that's concerned—it wouldn't take very long.

Q Your only purpose was to obtain employment with those firms who could not keep their books of account in Spanish or English when you made this canvass, was it?

A Yes, our purpose was to get as many Chinese firms on our list as possible who wanted to keep their books in English and who didn't keep their books in English, certainly.

Q And yet the persons who could not keep their books in English or Spanish and who were the only persons with whom you could hope to obtain employment, you took no note of their names?

A Well, I got the lists from these people. Now, can they keep their books in English, that's another question, Judge. We don't know that either, do we?

Q I thought that was the purpose of your canvas, to get the names of people who could not keep their books in English or Spanish?

A Several of them wanted me to write down myself the lists of their prices, and I absolutely refused; I said, "No, it's up to you to do that; the manager of this business should do that. I want the price list for such and such stuff; you put the list down." "But I can't do it. You write it down.—I will tell you what the prices are and you write it down". That's where I made a mistake; I should have taken the names of those firms, but I didn't. I just simply told them, "I don't want your prices at all", and walked out again. But all these people, I am almost sure that they don't keep their books in English.

Q And can't keep their books in English?

A I don't think they can, because I saw on the counters in the different shops and in the different Chino lumber yards where everything was in Chinese, they had one of those long Chinese pads, narrow pads, all written in Chinese.

Q So you as a bookkeeper, and from experience with the Chinese, are convinced that the people whose names appear in these documents, Exhibits 13-a to 13-kk, could not keep their books in English or Spanish?

A I believe they cannot.

MR. FELIX: I object, for the reason that the witness has stated that he did not see the books, and for the further reason that he is not competent to testify to more than what was done by the persons who issued to him these Exhibits 13-a to 13-kk.

Q There was some interruption by the fiscal when you answered last. Am I correct in my understanding that in your opinion the Chinese whose names appear in these Exhibits 13-a to 13-kk are not capable of keeping their books in English, Spanish or any native dialect?

A That is my opinion.

MR. FELIX: I object to the question on the same ground.

Q Take this firm known as Chong Hing, mentioned in Exhibit 13-a, is that the name of some Chinaman?

A If I remember right, that's a grocery on Calle Rosario. I am not sure.

MR. FELIX: When the witness is questioned about an exhibit, he has the right to see it before answering the question, because he is not obliged to answer from memory.

MR. GIBBS: He apparently doesn't want to see it.

MR. FELIX: And I object to his being questioned about an exhibit unless it is shown to him.

MR. GIBBS: I didn't want to ask him about the exhibit; I was simply identifying the same.

Q You don't know whether Chong Hing is the name of any Chinaman or merely—

A The name of the firm.

Q The name of the firm, or the shop?

A It's the name of the firm; that's all I know.

Q Did you see any Filipinos in the establishment of Chong Hing—Filipino employees?

A I don't think so; I don't remember; I don't think so; I didn't see any Filipinos in any of the Chinese stores, that I remember.

Q And you didn't see a single Filipino employee in a single Chinese establishment that you visited?

A Well, in some of these lumber yards, lumber businesses, there may have been Filipino laborers in the yard; I don't know—I was just in the office, and there was none in the office that I know of.

Q For what purpose did you desire this quotation from Chong Hing, Exhibit 13-a?

A Well, the main purpose was simply to know whether they could give me the quotation in English; that was the main purpose.

Q The main purpose was to see whether they could write in English?

A Whether they could write in English, that was the main purpose, because I didn't want to put in all the stuff; but the main purpose was to see whether they could make out a price list in English.

Q And you didn't ascertain the name of a single one of the persons who made out any of those lists?

A No, I didn't.

Q You don't know the name of a single person who wrote any of the writing in Exhibits 13-a to 13-kk, inclusive?

A Only the name of the firm.

Q And the only knowledge you have as to the name of the firm is what appears in the bill heads?

A In the bill heads of their business; some of them had the business stamped on them.

Q And at the time you obtained the quotation mentioned in these exhibits, you had no expectation or intention of delivering them to the Government or to the fiscal or to the Bureau of Internal Revenue for use as evidence in this case?

A Yes, sir.

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

Q You did?

A Yes.

Q So you went around to obtain this writing under the instructions of the fiscal, did you?

A No, sir.

Q Well, under whose instructions?

A Under our own, in our own business, but also for the benefit of the Government, so that the Government knows—

Q Well, with whom representing the Government did you communicate previous to making this canvass?

A With nobody.

MR. FELIX: I object to the question on the ground that it

is based upon an assumption not established so far in the record.

Q Then you mean to testify that you volunteered to obtain this information for the fiscal?

A No, I did not, sir; I just simply did it for our own business purpose, our own business interests, and certainly for the assistance of the Government also, so that they would know about it. I don't know what Mr. Shlosser done in the meantime when I made this collection—I don't know what Mr. Shlosser did.

Q Did Mr. Shlosser do the same thing?

A Mr. Shlosser got a few with me together, but I don't know what his purpose was. The way he explained it to me, it was to open a business office of accounting and bookkeeping for Chinese firms who don't keep their books in English. That's the main purpose what we started that thing for.

Q How many of these exhibits from 13-a to 13-kk were obtained by Mr. Shlosser?

MR. FELIX: I object to the question on the ground that it assumes a fact not established in the record.

A Three of them Mr. Juan Rodriguez got; the rest of them I got, sometimes with Shlosser together—Shlosser and myself went around and we both went in there together and got them—and the majority I got alone.

Q Did Shlosser get any of them alone?

A I don't think so; he was together with me all the time.

Q You don't know, then?

A I am pretty sure I put my initals on back of all of those I got, and don't think Shlosser got one alone—I think he was with me together all the time.

Q When did you put your initials on the back?

A Yesterday—wasn't it?

Q You wrote your initials on the backs of all of them yesterday?

A Yes, sir.

Q In what way does writing your initials on the backs of these exhibits yesterday assist you in identifying which were obtained by you and which were obtained by Mr. Shlosser and which were obtained by Mr. Rodriguez?

A I don't know how to answer that question.

MR. FELIX: I object to the part of the question which refers to the fact that part of these exhibits were obtained by Mr. Shlosser, because the witness didn't say any such thing.

A I didn't have these things in my possession. As soon as I got them, I turned them over to Mr. Shlosser, and Mr. Shlosser brought them over to the Internal Revenue.

Q You mean he took them to Mr. Posadas as soon as they were obtained?

A Yes, sir, I gave them to Mr. Shlosser; every day when I made a collection, I turned them over to Mr. Shlosser, and the list was right in the office and I put my initials on it this morning.

Q Where were you when you wrote your initials on the backs of these?

A Right here in Mr. Felix's office.

Q When did you go to Mr. Felix's office for the first time?

A This morning was the first time.

Q And where is Mr. Shlosser now?

A I suppose he is home. I don't know where he is now—he's somewhere in Manila.

Q Is Mr. Rodriguez here?

A No, I don't know him at all; Mr. Shlosser knows him —I don't know him.

Q And your initials on the back of each of these exhibits indicate that you yourself obtained them from the Chinese?

A Yes, sir, exactly.

Q Then how are you able to determine which are the three that were obtained by Mr. Rodriguez, when you were not present?

A Well, I have to go through the list to find that out; I believe Shlosser knows. I think it is two from a lumber yard and one from Calle Rosario that Rodriguez got.

Q Can you, by looking at the face of these documents, Exhibits 13-a to 13-kk, tell which were the three that were obtained by Rodriguez?

A I think Exhibit 13-a was obtained by Rodriguez—The Esperanza Bazar—I didn't go there. 13-n—

Q 13-n was obtained by Mr. Rodriguez?

A Yes, that's Rodriguez. I don't know whether 13-r was obtained by Rodriguez—I know it's not mine.

Q You didn't get 13-r?

A No, I didn't get that; I think those are the three from Rodriguez—I am not sure.

Q Go over the list and see if there are any more that you didn't get.

(The witness examined the exhibits one by one.)

Q Now, if you didn't get 13-d—you stated you initialed 13-d on the back yesterday?

A I initialed all of them this morning. They were lying

on the table, and I initialed all of them without looking at the front of them.

Q What was the purpose of initialing them?

A That's what Mr. Felix wanted me to do, to initial them on the back.

Q So that you could swear they were the ones you got?

A Well, Rodriguez is working for us, and I don't think it makes much difference if I got it or he got it, because we are working together.

MR. FELIX: The witness is not competent to testify on that point. I can be called to testify as to the purpose for which he was asked to put on his initials, and I am willing to do that.

Q Which was the next one that you didn't get?

A Exhibit 13-n.

Q Are you sure you got Exhibit 13-m?

A That's one I didn't get.

Q Now look at 13-n again, and see if you are sure you got it?

A This is the one that I gave you, 13-n, that I didn't get.

Q So you didn't get 13-m or 13-n, did you?

A No, that's the one I got, 13-m; I got that myself. 13-n is the one I didn't get.

Q How do you know 13-m is yours and 13-n is not yours?

A I recognize it by the firm, 13-m—I got that one.

Q What about 13-a? Who got that?

A 13-a—what firm is that?

Q Chong Hing.

A On Calle Echague?

Q I am asking whether you got 13-a?

MR. FELIX: The witness has the right to see the exhibit as to which he is being interrogated, and I request

that if the petitioners insist on examining the witness, the commissioner direct them to show the exhibit to the witness.

MR. GIBBS: I don't have to show it to him; this is proper cross-examination.

COMMISSIONER: Do you wish to show it to him?

MR. GIBBS: No, I don't want to show it to him. There is no object in my questioning him on cross-examination if I show him the paper.

WITNESS: It is impossible for me to remember all the Chinese names.

Q Do you know personally any of the people whose names appear in these exhibits?

A I might recognize them if I saw them; I don't know them personally. I just saw them there while I was in the office there and told them to give me the price lists, and that's all. I could recognize them if I saw them again—if I came to their store I could recognize them again. It is pretty hard to recognize a Chinaman anyway, in the first place, because they all look alike.

Q Do they all wear queues?

A No, I don't think they do; I didn't see any of them—they were all short-haired.

Q Were any of them mestizos?

A I don't believe so; I believe they are all pure Chinamen.

Q Don't you know?

A No.

Q You don't know?

A I think they are all pure Chinese that I saw.

Q Did you ever see a Chinaman dressed like a Filipino?

A I did, yes.

Q And you are able to distinguish them always?

A I believe I can, yes. I have been here twenty-three years, and I ought to know the difference between a Filipino and a Chinaman.

Q Mr. Riepe, if you had obtained this stationery from these people without anything in writing on it and had the writing done afterwards, how might we be able to detect that fact?

MR. FELIX: I object to the question on the ground that it is wholly without foundation.

A By the letter-head on it.

Q But how do we know that you didn't obtain the letter-heads and fill this in yourself?

A By my handwriting.

Q How do we know that you didn't hire some Filipino to do it?

MR. FELIX: I object to the question on the ground that it insinuates the commission of some subterfuge by the witness. The witness has not given the petitioners any right to insult him.

MR. GIBBS: I am asking him how we are going to know—

MR. FELIX: That is an insult to the witness, and the court would not permit it, and if this line of questioning is continued, I will submit the matter to the court.

Q What I wish to know, Mr. Riepe, without desiring to be offensive, is, what means have we of knowing that this writing on Exhibit 13-a, for example, was done by a Crinaman outside of your statement?

A I couldn't answer that question. If my word isn't good

enough for it, that's all I can do. I can give you my word of honor that that was written by a Chinaman. I am not doing that for crooked work.

Q But you don't know who the Chinaman is?

A Would you know one Chinaman from another one if you came to 150 different stores? That is not an easy matter to do. If my word isn't good enough for you, Judge, then you better leave it alone.

Q That is what I want to know, whether we have anything else by which we may be assured that any of these documents were written by Chinese other than your statement?

A I couldn't give you any assurance at all. I can only state that I went there and got them and they wrote them in my presence, and that's all I can say. If my word isn't good enough for that, then that's settles it.

Q Now, knowing that the question of whether or not the Chinese should be compelled to comply with this law is a matter of such vital importance to their welfare in business, did you expect, after volunteering as a detective to obtain information of this sort, that it would result in your obtaining employment from the Chinese?

MR. FELIX: I object to the question on the ground that it calls for a conclusion of the witness.

A I wasn't acting as a detective.

Q Without reference to how you qualify your conduct while you were obtaining this information, were you obtaining it with the expectation that the Chinese of the City of Manila would employ you as bookkeeper as a result of your services?

A I believe so; that was the main object in our going around to get these certificates—if the law was passed that the Chinese had to keep their books in English, that we could get the names of these firms and go to them and have an agreement signed with them that we could keep their books. It simply and plainly is a business interest for ourselves, for Shlosser and Company.

Q But in what way would these lists assist you in obtaining employment from the Chinese?

A Mainly to get the names of the firms, and also to see whether they made those lists out in correct English, and at the same time we went to their office to se whether they kept anything in English in their offices,—which we didn't find out.

Q Did you inquire of them whether they kept their books in English or Spanish?

A No, we didn't. You know yourself that they wouldn't give us that information. They were suspicious in the first place—whenever we came there they were suspicious.

Q What I am trying to get at is, if your statement here is true, in what way you expected these lists—take Exhibit 13-a, how you expected Exhibit 13-a to assist you in obtaining employment as the bookkeeper of Chong Hing.

A Well, the only answer I can give you to that is that we get the name of the firm and after the law has passed that all Chinese firms have to keep their books in English, then it would not be a hard matter for us to find out whether they do keep their books in English, and we could solicit their business

and get them to let us keep the books, and we charge them so much a month for it. Our rate would be P50.00 per month for keeping a set of books for a Chinese firm.

Q How much?

A P50.00 a month.

Q Have you obtained any employment yet?

A No, we haven't started yet; we are just trying to start.

Q You are just hoping that you may be able to assist the Government in enforcing this law so as to compel the Chinamen to employ you?

A Well, not employ us, no; I don't want to be employed by a Chinaman.

Q What do you want?

A We want to keep their books—yes, it's employment in one way, yes. We would run our own business, accounting and bookkeeping; that's what we intend to do.

Q Did you say anything to any of those Chinamen whom you visited about keeping their books?

A No, sir.

Q You realize that you are under oath, do you, Mr. Riepe?

A Yes, sir.

Q And do you mean to state seriously that your purpose in visiting these Chinese was to obtain their names so that you could afterwards negotiate with them for their bookkeeping business?

A That's the main object, yes.

Q Why could you not have obtained those names just as well from the directory or the telephone directory, or any other directory of the business houses?

A Certainly, I could, but that would not give us the information that we have now, whether they can write English or not, and this is a keep to the Government, too, is it not, in one way?

Q That's what we are trying to find out, whether it is reliable help or not.

A Well, that's what we think it is.

Q Upon the subject of whether they could keep books in English, Spanish or some local dialect, what assistance was this to you if, as you have previously stated, you don't believe that any of them can keep their books in English, Spanish or some local dialect?

A Well, I don't know what assistance it would be. I just got the list of Chinese who could write in English, etc.

Q And you were not obtaining this list for the benefit of the fiscal?

A In one way, too—a benefit to ourselves and to him.

Q Wasn't that the only purpose—to obtain it for the fiscal?

A I don't know that.

Q Well, as fast as you and Mr. Shlosser and Rodriguez got these quotations, you turned them in to Mr. Felix or to Mr. Posadas?

A I gave them to Mr. Shlosser and Mr. Shlosser turned them in here.

Q Turned them into the fiscal's office?

A I think so, yes; that's where I found them this morning. I gave them to Mr. Shlosser—whenever I made a collection of these things, I turned them over to him, and he brought them over here, I think. I didn't bring them over here—I don't know.

Q You understood that that was his purpose in obtaining them?

A I guess so, yes, I guess that was his purpose.

Q Did you keep any duplicates of those documents?

A No, we only made that data in single form, no duplicates.

Q You didn't keep any memorandum of them at your office?

A No, I have no list of them at all. As soon as I got them, I gave them to Mr. Shlosser.

Q And you knew that they were being obtained to be delivered to the fiscal?

A That's what Mr. Shlosser told me, yes.

Q So that their use for the purpose of obtaining employment from the Chinese had nothing to do with your securing those quotations?

A Well, I couldn't answer that question, Judge; I don't know—that's up to Mr. Shlosser to answer.

Q Were you in partnership with Mr. Shlosser?

A I am going in partnership as soon as we get the business started, because I am a bookkeeper and he is looking for a bookkeeper. He is the originator of the business. We are not started yet—we have no office yet or nothing.

Q You have no contract of partnership?

A No, not yet. He is an old acquaintance of mine and he knows I have been out of work, and he asked me to go in the Chinese bookkeepng business with him, and he asked me to go around and get these and I did it. That's all I can tell you.

Q Didn't he tell you what the purpose of these lists was?

A He told me that he was going to take them to the In-

ternal Revenue Collector, and that he wanted to obtain lists of Chinese firms who did not keep their books in English and who can't write English.

Q Did Mr. Shlosser agree with you that none of those people from whom you obtained Exhibits 13-a to 13-kk would be able to keep their books in English, Spanish or any local dialects?

MR. FELIX: I object to the question on the ground that the witness cannot testify for Mr. Shlosser,—

MR. GIBBS: I am asking him if he agreed with him on that.

WITNESS: Well, we didn't know no other—

MR. FELIX: I haven't finished my objection— and the witness cannot know whether the Chinese could or could not keep their books in English, Spanish or some local dialect, inasmuch as he testified that he did not see their books, and he is therefore not competent to testify on that point, and the question is therefore without foundation.

Q Do you know the firm of Nam Shing and Company?

A Is it a lumber outfit?

Q I am asking you if you know the firm of Nam Shing and Company.

A I do not; I don't remember. I have been there, I guess— from my certificate there I have been there, but I don't remember where it is.

Q You don't know what business they are in?

A No, I don't.

MR. FELIX: I desire to make it appear in the record that during the foregoing questions Exhibits 13-a to 13-kk were not shown to the witness.

Q Did you make any payments in advance on any prospective purchases from any of these people?

A Oh, no.

Q Who is Shlosser and Company?

A Well, Shlosser, I said he used to be a bookkeeper for the Manila Engineering Company.

Q But is there any such firm as Shlosser and Company?

A No, not registered, but as I said before, that is going to be the name of our concern if we get it started,—"Shlosser and Company, Accountants and Bookkeepers"—if we get is started.

Q And did Shlosser and Company make a deposit of ₱5.00 with Nam Shing and Company?

A No.

Q They didn't?

A No.

Q How do you account for that recital "Received from Mr. Shlosser and Company ₱5.00 on deposit for 1000 cards," printed in Chinese and English, "Total amount ₱11.00?"

A Well, isn't that one of those that I didn't—yes, that's 13-n; I don't know anything about it. Now, I will show you one of those cards.

MR. FELIX: The witness is referring to Exhibit 13-n, which he says that he did not obtain from the store mentioned in the exhibit.

WITNESS: That shouldn't have been in there at all; Shlosser should have kept that. That's not a price list; that's got nothing to do with the rest of them; that's got reference to these cards—we had some printed, and he deposited ₱5.00 for a thousand cards.

Q Did you put up any part of that ₱5.00?

A I had nothing to do with it; Shlosser did that. That's what I say, that's none of mine. He gave me one of

those cards, which I have in my pocket. He owes P6.00 the balance of that amount. I have nothing to do with it—that's just his personal bill that he owes.

Q When you went to the establishment of Chong Hing and called on him for this quotation, what representation did you make to him—referring to Exhibit 13-a?

A Well, I just asked him to give me the prices of different articles that he had in stock, that I wanted to get the cheapest prices I could obtain in Manila, that I might need some of it in the future.

Q Did you tell each one of these people—

A Practically the same thing.

Q You told some of them that you wanted to buy some of these goods?

A No, I didn't say I wanted to buy, but that I wanted to get the cheapest prices I could obtain on those goods in Manila; that I probably would buy. I didn't make any promises or anything of that sort; I just wanted to get the lists of their prices.

Q Do you know approximately how many Chinese firms there are in Manila?

A No, sir, over a thousand, I guess; I don't know.

Q Do you know there are three or four thousand of them?

A There must be more, I guess; I haven't got the least idea.

Q How many firms would you say you visited?

A Well, I should judge about 150 or 175—something like that—on different streets, Rosario, Azcarraga, Avenida Rizal, etc., and out in Paco.

Q That was the number that you personally visited that you know of?

A Yes, those that I saw.

Q And all you got from 150 or more were these exhibits, 13-a to 13-kk?

A Yes, sir, that's all; the rest of them refused to write it out themselves.

Q Do you know about how many Shlosser visited?

A Well, some of them he might have visited—some more—I don't know. Some days he went out together with me, you know.

Q Did he get any independently of those?

A No, I don't think he did, unless he kept them. I don't know—I didn't see any.

Q Is Mr. Shlosser an old-timer in the Philippines?

A Yes, he's been here some twenty odd years, I guess.

Q He came over as a soldier also?

A As a volunteer, yes; he came with the volunteers.

Q And he is married to a Filipina?

A No, his wife is an English lady; his wife is in Oakland, California, now.

MR. FELIX: I object to this on the ground that it is wholly immaterial.

Q And do you know how many firms Rodriguez visited?

A Only three, I believe—only three certificates that I got that Rodriguez visited.

Q Was he employed by Shlosser and Company?

A He is not employed yet; he is just helping us. When we get started, he will be employed.

Q In obtaining this information, was he working for you?

A He was working for Shlosser, the same as I am, practically.

Q Did you receive any compensation from Shlosser?

A No, sir, not a cent, not until we get the business started; then we go on a percentage basis, so much each, when we get started.

Q Take Chong Hing, Exhibit 13-a: in what language did you communicate with the person who wrote out this list?

A Well, I don't remember; we either talked Spanish or English to him, one of the two.

Q Don't you talk Tagalog?

A No, I understand a little Tagalog, but I don't talk it.

Q Does your wife talk Tagalog?

A No.

MR. FELIX: I object to this as being wholly immaterial.

Q What is your wife?

A She is a Visayan.

Q Doesn't she talk Visayan?

A We talk Visayan and Spanish also, but we talk mostly Spanish.

Q Haven't you learned Visayan?

A I understand it, but I can't talk it: I always talk Spanish to her.

Q Didn't you find any Chinese who spoke Tagalog or Visayan in this canvass that you made?

A Not that I remember; I always talk either English or Spanish to them.

Q Not knowing any of the people who made out these quotations, you don't know whether they had anything to do with the business or not except that you saw them in there?

A Well, I believe that the man who wrote that certificate, I believe he was the manager, because in several stores I went in, they had to call somebody else to do that writing.

Q Call them from the outside?

A No, not from outside; from the inside of the store, in the office.

Q You don't know where they got them, then?

A I don't know whether they were the managers or who they were, as far as that's concerned.

Q You don't know from what place they came?

A They came from inside; they didn't come from the street, I know that.

There being no further questions, the witness was excused, and withdrew.

The hearing was then, at 4:30 o'clock p. m., continued until Wednesday, December 26, 1923, at 2:30 o'clock p. m.

Wednesday, December 26, 1923.

The hearing was continued at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Jesus Obieta, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A Jesus Obieta, 43 years of age, married, Deputy Collector of Customs, living at 128 Calle Solis.

Q State whether, by virtue of your office, you have anything to do with the immigration of Chinese.

A By virtue of my office as deputy collector, we must decide upon all matters relating to Chinese immigrants and duly apply the immigration laws.

Q What laws do you apply?

A The Immigration Law and the Chinese Exclusion Act.

Q Are they laws or treaties?

A The Immigration Law is a law of the Cogress of the

United States, and the Exclusion Acts originated in treaties between the United States and China, and are laws of the United States.

Q Are Chinese permitted to enter the Philippine Islands?

MR. GIBBS: I object to the question on the ground that it calls for a conclusion of the witness, and that it refers to a matter which appears in the laws themselves.

MR. FELIX: This is a preliminary question.

A Only members of the exempt classes.

Q Who are they?

A Merchants, teachers, students, officials of the Chinese Government, and visitors upon sight-seeing or pleasure trips.

Q If Chinese bookkeepers should come to the Philippines, or if they desired to enter the Philippines, would they be permitted by the Custom House to enter?

MR. GIBBS: I object to the question on the ground that it calls for a conclusion of the witness upon a question of law.

A No, sir.

CROSS-EXAMINATION BY MR. GIBBS:

Q Have you a copy of the Customs Regulations?

A Not here; we have it in the office.

Q Have you the Chinese Exclusion Acts compiled in the form of a pamhplet?

A Yes, sir.

Q Mr. Obieta, Chinese would not be excluded by reason of the fact that they know how to keep books, would they?

A No, sir, we would not permit them to enter merely because they know how to keep books.

Q What other qualifications in addition to accounting would Chinese have to have in order to gain entry through the Custom House?

A They must be a member of the exempt classes, those which I have just mentioned.

Q And if, in addition to the knowledge which they might already have of accounting, they desire to study, they would still be within the exempt class?

A Yes, sir.

Q There are great many who enter as students, are there not?

A Some, very few.

Q And in order to determine whether they enter as members of the student class, they are not limited to any particular study?

A No, once they have entered the Philippines, they can follow any studies they desire.

Q So that Chinese accountants, despite the fact that they are engaged in the occupation of students or are merchants, may enter, notwithstanding the fact that they are accountants?

A We admit only merchants. We carefully investigate the cases, and when we are satisfied that they are merchants and that they are not coming for the purpose of evading the law, they are permitted to enter. We don't know whether they afterwards change themselves into accountants or not.

Q But the fact that they are at the same time both accountants and merchants does not prevent their entry?

A But it must appear in their admission papers that they are merchants. Any intimation that they are accountants would be sufficient to deny their entry.

Q Well, if they are both merchants and accountants, the fact that they are also accountants does not prevent their entry, does it?

A It means nothing to us if they are accountants. We permit them to enter because they are merchants.

Q And if they are students, the fact that they are also accountants or have studied accounting among their studies, does not prevent their entry, does it?

A We admit those who are students, without regard to the branch of study that they are going to engage in, as long as they prove that their real object is to study, and nothing else.

Q To your knowledge, have you ever excluded an applicant for admission into the Philippines who was an accountant?

A I don't know of any case, but he would have to seek admission not as an accountant, but as a student or a member of the exempt classes.

REDIRECT EXAMINATION BY MR. FELIX:

Q How are Chinese accountants and bookkeepers classified in the Custom House?

A As manual laborers.

Q What conditions are required to be fulfilled by Chinese students who desire to enter the Philippines before they are permitted to enter?

MR. GIBBS: This being a matter of regulation, the testimony of the witness is not admissible upon that point.

Q State the condition required by the Philippines Customs to be fulfilled by Chinese students who come to the Philippines before they are permitted to enter?

A They must bring with them a document, which we call the Section Six Certificate. That document is provided for in the treaties between the United States and China, and it is issued by the Chinese governor of the province in which the applicant has been residing during the past few years, and it sets forth in detail the classes of study that the person who desires admission into the Philippines is to engage in. After this document has been issued by the Chinese authorities, it next goes to the American consul at the point of embarkation, and it is then ascertained whether this application to enter the Philippines really comes from a student who desires to go there for the purpose of taking a more advanced course of education, and when he is convinced that it is a bona fide case, he so certifies, and with this certificate the applicant enters the Philippines. Furthermore, I wish to add that the entry of Chinese into the Philippines is permitted only when it is proven to the satisfaction of the American consul that they go there to study some branch of human knowledge for which the facilities do not exist in China; that is to say, if there is the same opportunity in China to study what this person desires to study here in the Philippines, he is not permitted to enter. He must satisfy the American consul that he is coming here to study something for which no facilities exist in China, such as, for example, a course in some college of science.

Q And after permission is given a person to enter the

Philippines, and after he has completed his advanced studies, what becomes of the person who has been admitted?

A Nothing; once he is within these islands, he is free to follow his studies in any way he wishes.

RECROSS-EXAMINATION BY MR. GIBBS:

Q And he can stay here all his life?

A If he wishes, he can.

REDIRECT EXAMINATION BY MR. FELIX:

Q And if he ceases to be a student?

A The law specifies a certain time—sometimes it is three years, sometimes five years—within which the Collector of Customs may issue an order of arrest and arrest a person who enters upon the pretext that he is something which it later appears he is not.

RECROSS-EXAMINATION BY MR. GIBBS:

Q All of these rules and regulations are the subject of written laws of Congress, are they?

A No, sir.

Q And the time during which a student is supposed to study in the Philippines—is that the subject of an Act of Congress also?

A No, it is not fixed.

Q Who does fix the time? Where do you get this period of three or five years of study?

A It is an Act of the Congress of the United States.

Q An Act of Congress?

A Yes.

MR. GIBBS: I move to strike out the testimony of the wit-

ness as to the provisions of the acts of Congress on the ground that it is not the best evidence.

Q Do you mean to say that in the application of the acts of Congress relating to the immigration of Chinese, if a Chinaman enters the Philippines as a student in good faith, he is obliged to study for any particular period of time as a condition of his remaining in the Islands permanently?

A He comes to the Philippines as a student, and he must study when he arrives. Now, as to the time that he must study, that is not fixed, nor can it be fixed, but as long as he enters in good faith, if after his entry we discover that the conditions under which he was permitted to enter do not exist, we can arrest him.

Q You have not answered my question, so I will have to ask you another one in order to make the matter clear: if a Chinese student enters the Islands in good faith for the purpose of pursuing his studies, he is not obliged to continue studying any particular length of time as a condition of his remaining here permanently?

A No.

Q And once he is permitted to enter and does enter in good faith, he may continue living in the Islands the rest of his life if he sees fit?

A Yes, sir.

There being no further question, the witness was excused, and withdrew.

Dionisio Fernandez, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A Dionisio Fernandez, 35 years of age, married, supervising agent of the Bureau of Internal Revenue, residing at Dagupan, Pangasinan.

Q How long have you been employed in the Bureau of Internal Revenue?

A Since 1912.

Q In what capacity did you begin to work in the office of the Bureau of Internal Revenue?

A As assistant agent, agent, and then as supervising internal revenue agent, which position I hold at present.

Q How long has it been since you have been supervising agent of the Bureau of Internal Revenue in the province of Pangasinan?

A Since 1919.

Q What district is that?

A It is in District No. 3.

Q During the time in which you have discharged your duties as such supervising agent, or a supervising agent of that district, have you had occasion to visit the Chinese establishments within your jurisdiction?

A Yes, sir.

Q In what language do the Chinese merchants keep their books within the district under your jurisdiction?

A In Chinese.

Q In addition to those books of account kept in Chinese, do the merchants of your district keep any other book in any other language or dialect?

A The internal revenue sales books and the invoices of purchases—that is, invoices of goods.

Q In what language or dialect are those sales books of the Bureau of Internal Revenue and those invoices written?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence.

A In English or Spanish.

Q Do you know whether the Chinese mercantile establishments or houses in your district have employees who know or understand how to read or write English, Spanish or any local dialect?

MR. GIBBS: I object to the question on the ground that it is incompetent and that no foundation has been laid for its admission.

A Yes, sir.

Q What do you mean to say by "yes, sir?"

A What I mean to say is that I used to see them issuing invoices to dealers, and besides that, I have some of those invoices which I have secured, and if the court will permit me, I can exhibit those invoices written by the Chinese.

MR. GIBBS: I move to strike out the answer of the witness with reference to the writing of invoices by the Chinese on the ground that it is not the best evidence.

MR. FELIX: We wish the record to show that the invoices to which the witness has referred are in the possession of the Bureau of Internal Revenue, and that we have not presented them because they were obtained by the witness, who is, as has been stated, the supervising agent of the Bureau of Internal Revenue. Nevertheless, if the Supreme Court desires that we in-

fringe the provisions of the Administrative Code relative to revealing the secrets of the Chinese merchants, we are wiling to offer for introduction the invoices to which the witness has made reference.

MR. GIBBS: We presume that any statement of the fiscal as to what he is willing or proposes to do, until he actually attempts to do it, cannot be the subject of consideration by the court.

Q Those invoices or copies of invoices which you have from the Chinese establishments: in whose presence were they written?

A In my presence.

Q To what nationality do the persons who wrote those invoices belong?

MR. GIBBS: That question is objected to for the reason that it refers to alleged writings which have not been produced or offered in evidence, and moreover, the testimony sought to be elicited is incompetent and immaterial, and no foundation has been laid for its admission.

A All Chinese.

Q In what language or dialect were those invoices written, copies of which you obtained from the Chinese merchants of your district?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence, the documents themselves being the best evidence.

MR. FELIX: We maintain that under the circumtances stated by the witness, it is the best evidence.

A The invoices were written in English, Spanish, and the local dialect of the place where the Chinese reside.

Q Have you recently made any inspection, or anything of

that sort, to determine whether the Chinese merchants in your district can read or write English, Spanish or any local dialect?

MR. GIBBS: I object to the question on the ground that it is incompetent and that no foundation has been laid for its admission.

A Yes, they can write English, Spanish or any local dialects, but very few of them can make out the invoices, but they can write the figures, that is, the daily sales books, that is, the amount they sell, they can write in the internal revenue sales books.

Q Where are the copies of invoices to which you have made reference and which you stated you obtained from the Chinese merchants of your district?

A In the possession of Mr. Posadas; I delivered it to Mr. Posadas.

Q Which Posadas?

A The Acting Collector of Internal Revenue.

Q In what towns and provinces are the establishments situated which you visited?

A For instance, in the province of Pangasinan, Dagupan, San Carlos, Malasiqui, Bayambang, Rosales, San Quintin, Tayug, Manaoag, and San Jacinto; in the province of Tarlac, Tarlac, Concepción, Capas, Victoria, Gerona, Paniquī and Moncada.

Q When did you make that visit of inspection to those establishments?

A On December 18, 1923; that is, I started on December 18th.

Q Did you obtain copies of invoices of the Chinese business establishments recently visited by you in those municipalities and provinces indicated by you?

A Yes, sir.

Q They are the invoices to which you have referred?

A Yes, sir, they are the invoices.

CROSS-EXAMINATION BY MR. GIBBS:

Q When did you begin working for the Bureau of Internal Revenue?

A Since 1912 up to the present time.

Q Where have you been stationed during that entire period?

A I have been stationed in Bulacan, Pampanga, Ilocos Sur, Ilocos Norte, La Union, the Mountain Province, Pangasinan, Tarlac, and Nueva Ecija, and also here in Manila.

Q In what capacity were you acting when you first began?

A As agent's assistant.

Q Agent's assistant—that means the assistant of an agent?

A I don't know what it is, but that is our title.

Q Well, your work is that of an assistant of an agent, is it not?

A I don't know our title. In our appointment, it says, "You are hereby appointed as agent's assistant;" it doesn't say "assistant to an agent."

Q Don't you know whether or not you actually acted as the assistant of an agent?

A I don't know about that particular; the only question I know is that I am agent's assistant—that was my appointment.

Q Who was your immediate superior?

A My immediate superior in what year, because I have had so many?

Q Well, when you began, during the period—

A You mean the Collector of Internal Revenue—my immediate superior was Mr. Borden.

Q That's at the present time, is it?

A No, I am now supervising agent.

Q Well, you acted from 1912 to 1919-

A As agen't assistant and as supervising internal agent

Q I thought you began as supervising agent in 1919.

A No, sir, not 1919; I don't remember whether it was 1917 or 1918 I began as supervising agent.

Q Well, what were your duties from 1912 until you be came supervising agent in 1917 to 1918?

A My duty was supervising internal revenue agent, if I am not mistaken, from 1917.

Q You have not understood my question: what were your duties from 1912 until you became supervising agent in 1917 or 1918?

A Agent's assistant.

Q Well, do you know what you did as agent's assistant?

A What was my duty, you mean?

Q Yes, that's what I asked you before and you didn't answer it.

A My duty as agent's assistant was to inspect stores, and examine and make investigations.

Q You inspected the stores, or inspected the books of the stores?

A I inspected the stores thoroughly and examined the books afterwards, or sometimes we investigated the books and then inspected the stores.

Q Are you an accountant?

A I have finished the bookkeeping and business form from the International Correspondence Schools.

Q When did you finish that work?

A In 1913—between 1912 and 1913.

Q When did you begin it?

A I began that since 1905.

Q What languages do you speak?

A I speak English and I speak a little Spanish, but I a[illegible] a Tagalog.

Q You speak very little Spanish?

A Yes, very little Spanish—enough to understand each other.

Q Can you speak Spanish grammatically?

A I can write a little.

Q How would you translate, "I would go to America if I had the opportunity?"

MR. FELIX: I object to the question on the ground that it is immaterial.

A "Iria a America si tengo la oportunidad". That is the way I am going to translate it.

Q You began making this canvass for evidence that the Chinese can write English and Spanish on the 18th of December, did you?

A I began to secure invoices on that date.

Q And upon whose instructions did you begin what work?

A I received a confidential letter from our Collector.

Q Have you got the letter with you?

A No, sir, I have it in my office in Dagupan.

Q A typewritten letter?

MR. FELIX: I object on the ground that the question is wholly immaterial.

A Yes, a typewritten letter.

MR. GIBBS: I ask that the Collector of Internal Revenue furnish me a copy of the letter written to this witness.

MR. FELIX: We object to the demand of the petitioners as expressed by their attorney for the reason that,

as stated by witness, that letter is confidential. However, if the Supreme Court so desires and orders, we can present the letter together with he invoices to which the letter refers.

Q How many establisments did you visit?

A 83, altogether, in these two provinces and the towns mentioned by me.

Q When did you finish this work?

A I made a mistake: I began on the 14th, not the 18th; my previous testimony should state that I began on the 14th and I finished on the 18th.

Q That is, in two provinces?

A In two provinces by auto.

Q Were you acquainted with the Chinese whose stores you visited?

A They know me.

Q I asked you if you were acquainted with them.

A Some of them.

Q Had you visited all those places before?

A Yes, sir, I had visited those places before, those mentioned in this—

Q The 83 that you canvassed, had you visited all of them before?

A Yes, I had visited them all before.

Q Did any of those Chinese have employees other than Chinese in their establishments?

A All Chinese; I know that they are all Chinese in their establishments.

Q None of them had any employees other than Chinese?

A Not employees. Some of them had a Filipino servant, but not as an employee in their establishment.

Q What representations did you make to these Chinese as to your purpose in visiting them?

A My purpose—I just went in the Chinese store, and I didn't say, "I am an internal revenue agent"; I just went in the store and said, "Give me a copy of your invoices;" but I didn't say that I am an internal revenue agent, because they know me.

Q What particular invoices did you ask them for?

A A copy of the invoices of the goods sold by them.

Q You say you found some of them written in the local dialects?

A Yes, some.

Q And most of them in English?

A Most of them in Spanish.

Q In what local dialects did you find them written?

A Pangasinano and Ilocano.

Q Can you read Pangasinano?

A I can read Pangasinano, yes.

Q What is the Pangasinano word for salt?

A They call it "asin".

Q How do you spell it—"a-s-i-n?"

A Yes, "a-s-i-n."

Q What is the Ilocano word for salt?

A I guess it is the same in Ilocano.

Q And Tagalog?

A The same.

Q Can you express "salt" in any other local dialect than Tagalog, Ilocano and Pangasinano?

A That is what I know; I know that they call it "asin".

Q What is the Pangasinano word for "sugar"?

MR. FELIX: I object to the question on the ground that it

is wholly immaterial. I didn't object to the former question, but this is wholly immaterial.

A I don't know in Pangasinano, but I know in Ilocano they call it "masamit".

Q And what do they call it in Tagalog?

A "Azucal."

Q What is the Pangasinano word for "linen?"

MR. FELIX: I object on the same grounds.

(The witness did not answer the question.)

Q You don't know, do you?

A I do not.

Q You don't know the Pangasinan language at all, do you?

A I know very little, but I know Ilocano very well.

Q How are you able to tell that some of these alleged invoices were written in Pangasinan?

A Because I can read it; I have seen it also.

Q You can read it, but without knowing what is in it?

A I asked the Chinese what is the meaning of that in Pangasinan, and they told me the meaning.

Q You had the Chinese translate some of the local Filipino dialects to you, did you?

A But very similar to the Tagalog dialect; in Pangasinan, some of the words are very similar, like "'babaye" in Pangasinan is "bii".

Q What does it mean?

A That means "woman;" it is very similar, so I understand that. I am almost five years in Pangasinan. I don't speak it very well, but I understand.

Q But you can't read or write Pangasinano?

A I can write, but I can't write it very well.

Q Your can write it, but you don't know what it is after you write it?

A I know; I know the meaning.

Q But you can't give me any considerable number of words in Pangasinano, can you?

MR. FELIX: The witness has already testified that he understands what he reads, even though he speaks only a little.

A I can; I mean to say that—

Q What is the word "wool" in Pangasinano?

A They call that "lubong", and in Tagalog "mundo".

Q What do you call it in Spanish?

A "Mundo".

MR. FELIX: I desire that the record show that the witness is testifying in English.

Q Is there any language that you prefer to speak in rather than English?

A Well, I prefer English, because I am educated in English.

Q You know more about English than any other language, don't you?

A You mean foreign languages?

Q I mean any language.

A I know more English, and also Tagalog, because I am a Tagalog.

Q Have you ever been educated in Tagalog?

A It is not necessary to have any education in Tagalog. I can read Tagalog very well.

Q You have received an education in English?

A Yes, in English.

Q And that is the only language that you have studied and taken lessons in, is it not?

A Yes, in English.

Q Now, if you don't know what the word "wool" is, do you know what the word "cotton" is in English?

A I know what "cotton" is in English.

Q But you don't know what "wool" means in English?

A I know.

Q You know what "wool" means?

A Yes, I know "wool".

Q What is the word for "wool" in Pangasinano?

A I don't know in Pangasinan what "wool" means.

Q Do you know what the word "cotton" is in Pangasinan?

A Yes, but "cotton" and "wool" are different in Pangasinan.

Q What is the word "cotton" in Pangasinan?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A I don't know in Pangasinan.

Q You say that all of these Chinese store keepers whose places you visited kept the internal revenue sales book in English or Spanish?

A Yes.

Q On this particular trip, did you examine their sales books?

A Not on this particular trip. Since before I used to examine those books, and they write English or Spanish.

Q When had you examined the sales books of those particular Chinese before that canvass you made?

A Every month I used to inspect them — nearly every month—sometimes once every three months.

Q And can you remember which ones of them kept their sales books in English and which in Spanish?

A Yes.

Q Did any of them keep their sales books in a local dialect?

A A local dialect?

Q Yes.

A Very few, because if they don't understand any English or Spanish, they have to write them in local dialect.

Q Can you give the name and address of a single Chinese who keeps his sales book in a local dialect?

A I don't remember the names.

Q Do you swear positively that any Chinese merchant in either of the two provinces keeps his sales book in the local dialect?

A Not all of them; very few.

Q Any of them?

A Very few of them; not all.

Q Will you swear that one of them keeps his books in a local dialect?

A Yes, I can.

Q Can you give the name and address of one Chinese merchant who keeps his sales book in a local dialect?

A I will explain that about the local dialects.

Q I want you to answer the question first?

A What I mean by a local dialect is, for instance, one will buy ten sacks of rice, and instead of writing in Spanish or English, thy put it in, "ten sacks of abias;" but I don't mean the number—the number is in common figures, and I consider that English or Spanish —I mean the wording, when the sale exceeds fifty pesos or more.

Q Can you give the name of any Chinese merchant who keeps his internal revenue sales book in a local dialect?

A I can't give.

Q And you have no Chinese merchant in mind who keeps his sales book in any local dialect?

A I know they are keeping them, but I don't know their names.

Q What you mean is that occasionally they put down the local name for rice, or some other product--

A Or some other thing which they don't know in English or Spanish.

Q And did all of those 83 Chinese merchants keep their regular books in Chinese?

A Yes, all of them.

Q Didn't any of those Chinese keep their internal revenue sales book in Chinese?

A No, none.

Q And what other book did you say they kept in English, Spanish or a local dialect?

A I have testified that it is the internal revenue sales books and the invoices.

Q Are there any books required to be kept by the internal revenue bureau up there than the internal revenue sales book?

A At present that is the only requirement, to keep the internal revenue sales books, but also about the bookkeeping, but as it is not yet decided, they are not yet keeping them.

Q But the books showing the purchase of goods: are there any books of that sort required to be kept by the Bureau of Internal Revenue in the provinces?

A There is.

Q Do you require the book of purchases to be kept by the Chinese?

A Not yet, because the case is still pending.

Q There has been no regulation distributed in the provinces requiring the merchants to keep books of purchases?

A Yes, there is a regulation; we issued regulations in that particular case.

Q When did you receive those?

A I don't remember the date when I received them.

Q Haven't they been enforced?

A I guess it is still yet pending, but we are enforcing that with the Filipinos.

Q I call your attention to Exhibit 2: did you assist in furnishing the data from which that was prepared?

A No.

Q In what provinces are you the supervising agent?

A In Pampanga, Tarlac, Nueva Ecija, Pangasinan, and one town in the province of La Union.

Q As to Pampanga, I see here on this Exhibit 2 certain data with reference to the number of Chinese keeping only the Bureau of Internal Revenue sales books, the number of Chinese keeping Chinese accounting books besides the internal revenue sales books, and the number of Chinese keeping only Chinese books in the province of Pampanga. Did you have anything to do with furnishing those data?

A I furnished that data—I made a mistake in my previous answer: I remember now that I furnished that data.

Q Are any of the store keepers mentioned in this Exhibit 2 in the province of Pampanga among the 83 whose places you canvassed?

A No, I didn't go to Pampanga—that is, regarding the invoices I didn't go to Pampanga.

Q Did you furnish the data in Exhibit 2 for the province of Pangasinan?

A Yes, all of those provinces *I have furnished the data*, Pampanga, Tarlac, Pangasinan, etc.

Q Now, are any of the number mentioned for the province of Pangasinan in Exhibit 2 among the 83 from whom you claim to have obtained invoices?

A Not in Pangasinan, 83; it was 83 invoices for Pangasinan and Tarlac.

Q Well, are any of the 83 from whom you claim to have obtained invoices a part of the number mentioned for the province of Pangasinan in Exhibit 2?

A Yes, a part.

Q When did you obtain this information that you furnished for Exhibit 2?

A I don't remember the date when I received the order.

Q Well, what year?

A I don't remember the year.

Q Was it this year?

A I don't remember; I have it filed in my office. I have so many things to attend to, I can't remember it.

Q Don't you know whether it was for this year or not?

A I don't remember what year.

Q Well, were all of the 83 whom you canvassed for Pangasinan included in Exhibit 2 for that province?

A And the province of Tarlac—some of them are included in that.

Q Well, all of the 83 were from Pangasinan and Tarlac?

A Yes, in the towns mentioned by me.

Q Well, were all of the 83 from whom you claim to have

obtained invoices included in the persons enumerated in Exhibit 2 for Pangasinan and Tarlac?

A Some of them are included in those 83.

Q How many of them?

A You mean to say how many of those 83 are included in this Exhibit?

Q Yes, how many are included in this Exhibit 2?

A I can't remember how many of them.

Q Do all of the Chinese merchants in Pangasinan and Tarlac keep the Bureau of Internal Revenue sales books?

A All of them keep the Internal Revenue sales books.

Q And they are all kept in English, Spanish or some local dialect?

A That is in the wording. In the wording, for instance, "10 sacks of rice", some of them, instead of writing "rice" or "arroz", they write that in the local dialects.

Q Do all of the Chinese merchants in your district keep the Bureau of Internal Revenue sales books in a language other than Chinese?

A Some of them keeps only in English or Spanish.

Q Now, where the Chinese keep full sets of books, are they also required to keep separate Bureau of Internal Revenue sales books?

A You mean to say, those Chinese having Chinese internal revenue sales books?

Q Yes.

A In my province there is none; there is nobody that keeps Chinese internal revenue sales books, that is, no Chinese in my district keeps only the commercial Chinese books without the internal revenue sales book.

Q When you obtained these invoices from the Chinese, did you issue receipts for them?

A No, I didn't issue a receipt.

Q Did you promise to return them to them?

A That is only a copy; I didn't promise to return them.

Q Those were their retained copies?

A No, sir, an extra copy—a copy of the retained copy.

Q And you required them to make those copies of those retained copies for you?

A Yes, I asked them to give me an exact copy of the retained copy.

Q How many did you obtain from each of those 83 persons?

A Most of them, just one copy, each store; very few I asked two copies from.

There being no further questions, the witness was excused and withdrew.

The hearing was then, at 4:30 o'clock p. m., continued until Thursday, December 27, 1923, at 2:30 o'clock, p. m.

Thursday, December 27, 1923.

The hearing was continued at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Silverio Enriquez, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A Silverio Enriquez, 32 years of age, married, agent's assistant, Bureau of Internal Revenue, living in Malolos, Bulacan.

Q Have you recentyl made any trip throught the province of Bulacan?

A Yes, sir.

Q For what purpose?

A By order of the Collector, to visit the Chinese tiendas and obtain invoices of the goods which they sell.

Q Have you complied with that order of the Collector?

A Yes, sir.

Q To what Collector are you referring?

A Mr. Posadas.

Q Of the Internal Revenue Bureau?

A Yes, sir.

Q When did you make that trip

A From the 18th of December.

Q This month?

A Yes, sir, this month.

Q Up until what date?

A Until the 21st of this month.

Q What municipalities of the province of Bulacan have you visited?

A The municipalities of Malolos, Baliuag, San Miguel, Hagonoy, and Bulacan.

Q And what did you do in all those municipalities mentioned by you on that trip?

A I visited the Chinese tiendas and obtained copies of invoices of the goods which they sell.

Q Where are those invoices?

A They are in the possession of the Collector of Internal Revenue.

Q Who wrote those copies of invoices?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence and on the further ground that it refers to documents which have not been identified or offered in evidence.

MR. FELIX: We repeat again the same offer which we made

with respect to the copies of invoices gathered by the witness Dionisio Fernandez, who testified yesterday. If the court is of the opinion that their presentation will not constitute any violation of the law, we will be very glad to produce those copies of invoices.

MR. GIBBS: In answer to the statement of the fiscal, we protest against the pretense that the fiscal or the Collector of Internal Revenue have in their possession documentary evidence which they are ready or willing to introduce in evidence in the face of the fact that up to the present time we have no evidence of the existence of any such documents, and that once the witness finishes his testimony and leaves the stand, there will be no means of further investigating the alleged documentary evidence, and once the proofs are closed, there will be no opportunity before the Supreme Court to go back of what appears to counsel for the petitioners to be a mere bluff.

MR. FELIX: The object of the respondents in calling and introducing Mr. Silverio Enriquez and the former witness, Mr. Dionisio Fernandez, to testify as witnesses in this case was to prove that the Chinese merchants in the provinces, whom both witnesses have mentioned, know how to read and write English, Spanish or some local dialect. The testimony of these witnesses as to the fact that they have seen persons in the Chinese establishments of their respective provinces write in English, Spanish or some local dialect, is admissible and pertinent to establish such facts as we propose to prove by that testimony. The invoices to which both witnesses have referred

would be corroborative evidence of the testimony of these witnesses—corroborative proof which we would be willing to submit if it were not for the fact that it would constitute an infraction of the law. Under the existing circumstances, and considering the positions which this witness and the former witness, Dionisio Fernandez, occupy in the Bureau of Internal Revenue, their testimony on this point is the best evidence. This is our answer to what has been stated by the attorney for the opposing side. Coming back to my question, which so far has not been answered, I desire to know from the witness who wrote the copies of the invoices to which he has referred.

MR. GIBBS: I object to the question for the same reason.

A Chinese.

Q Chinese from where?

A In the tiendas which I have inspected.

Q Of what province?

A In the tiendas which I have mentioned in my former statement.

Q How many tiendas did you visit in that inspection which you made?

A Twenty-one.

Q Why did you only inspect twenty-one tiendas?

A I was not able to inspect them all for lack of time.

Q In those tiendas inspected by you, do you know whether there are members of the personnel of Chinese nationality who know how to read and write English, Spanish or any local dialect?

A Yes, sir, and as evidence of that, the Chinese them-

selves were the ones who made the invoices in my presence.

CROSS-EXAMINATION BY MR. GIBBS:

Q Did you know these Chinese before that trip?
A No, sir, not all of them.
Q Did you know any of them before?
A Yes, sir.
Q Which ones did you know—how many did you know?
A One in Malolos and two in Hagonoy.
Q So that, of the twenty-one whose establishments you inspected, you didn't know more than three?
A Yes, sir.
Q Were there any Filipino employees in any of these stores?
A I haven't seen any Filipino employee in those tiendas.
Q How many employees would you say there were in each of those stores?
A I can't tell you the exact number, because I didn't go there to count the employees.
Q Do they all have a considerable number of employees?
A There are some tiendas which, during my inspection to which I have referred, sometimes had four employees and sometimes two.
Q You didn't talk with the owner of the store?
A Yes, sir, I spoke with the owner.
Q But you didn't speak with the owner of the establishment?
A Not all of them, in the inspection which I made. I always asked for the owner, and sometimes the owner was there and sometimes not.
Q But, as you didn't know any of them outside of the three

which you have mentioned, you did not know, as a matter of fact, whether you spoke with the proprietor or only with some employee?

A No, sir, because sometimes they presented themselves to me as the owners.

Q Outside of the three metioned, which one presented himself to you as the owner?

A Outside of the three?

Q Yes.

A I don't remember which of the tiendas it was.

Q You don't remember the name of any of them?

A No, sir.

Q And if a mere employee represented himself as the proprietor, you had no means of knowing whether it was true or not?

A Outside of the three mentioned, you might say that, but I don't believe, from the manner in which those others treated me and the manner in which they comported themselves, that they did that.

Q And who are the three whom you knew formerly?

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A One in Malolos and those two in Hagonoy.

Q What are their names?

MR. FELIX: I object on the same grounds.

A I don't know their names.

Q You only knew their faces?

A Yes, their faces.

Q Have you taken any list of the names of the Chinese whose establishments you inspected?

A No, sir.

Q Didn't you make any record of this trip that you made?

A No, sir, not a real record, but in the copies of the invoices appears the name of each of those Chinese merchants who made those copies of invoices.

MR. GIBBS: I move that the testimony of this witness as to the contents of these supposed invoices be stricken out on the ground that it is not the best evidence and on the further ground that it is not responsive to the questions.

MR. FELIX: I object to the motion of counsel for the petitioners on the ground that if the petitioners desire to see the invoices, they can pray the Supreme Court to order their presentation, and if the Supreme Court rules in its decision that it does not constitute a violation of the law, we will be very glad to obey that ruling.

Q Did you explain to the Chinese the object of obtaining the supposed copies of invoices?

A No, sir. To what explanation do you refer?

(The question was then repeated:)

A No, sir.

Q They were all willing to accede to your request without any objection?

A No, because they knew that it was for the Bureau of Internal Revenue.

Q You explained to them that you were obtaining this as evidence against themselves?

A No, sir, they know that I am an employee of the Bureau of Internal Revenue.

Q But you did not explain to them that you were obtaining these copies to be used as evidence against themselves?

A No, sir; they simply gave them to me because they knew

that I was an agent of the Bureau of Internal Revenue.

Q How many Chinese establishments are there in the province of Bulacan?

A I don't know the number.

Q Approximately?

A I can't estimate that either, because there are many of them.

Q All those Chinese from whom you obtained those copies keep their books in Chinese characters?

A No, what I saw was the internal revenue book, which was written in Spanish words and figures.

Q Are you one of the Internal Revenue Inspectors?

A I am one of the agent's assistants.

Q But is it your duty to inspect the books of the Chinese?

A Yes, sir.

Q Do you inspect the books of those twenty-one Chinese frequently?

A No, because I was detailed in charge of the liquor distilleries.

Q Those copies were copies of invoices of sales for cash, or on credit?

A This was a list of the prices of alcohol and cigarettes which they sell. In the list appear the name of the article and the price, and in these copies of invoices there is no column provided to show whether sales were on credit or for cash.

Q Those were copies of invoices covering sales of alcohol?

A Copies of invoices covering sales of alcohol and cigarettes.

Q And the reason for their not being presented here as

evidence is not the fact that only two words, "Cigarettes" and "Alcohol", appear in the invoices?

MR. FELIX: As far as the invoices are concerned, as heretofore stated, these invoices are in the possession of the Collector and we are entirely willing to produce them here. The only thing the Supreme Court has to do is to order us to bring them here, and we will be very glad to do so.

Q So that in these invoices there is written, "So many packages of cigarettes" and "So many gallons of alcohol?"

A Packages of cigarettes, and the liquor is sold in arrobas, in bottles, in cases and in demijohns.

Q Do you know whether the Chinese, in selling goods for cash, keep copies of those invoices?

A I don't know.

Q Would you say that there are one thousand Chinese establishments in the province of Bulacan?

A I couldn't tell you.

Q But you know that there are a great many?

A Some people might call it many, and some might say that there are only a few Chinese establishments.

Q Did you visit all of the Chinese establishments in the town of Balintawak?

A Yes, sir.

Q How many are there?

A Five.

Q And in San Miguel did you visit all of them?

A Yes, there is only one Chinaman in San Miguel.

Q And what were the other towns—Hagonoy?

A Yes, Hagonoy.

Q How many Chinese establishments did you visit there in Hagonoy?

A Four.

Q Were they all that there were?

A Yes, those were all there were, only those four.

Q And how many Chinese tiendas are there in Malolos?

A I don't remember very well know many there are in Malolos.

Q Did you visit all the Chinese establishments in Malolos?

A I remember having visited all of them, but I don't remember the number of them that there were.

There being no further question, the witness was excused and withdrew.

Aureliano Magat, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A Aureliano Magat, 35 years of age, married, agent's assistant in the Bureau of Internal Revenue, residing in Manila.

Q Did you recently make any inspection in any province of the Philippines?

A Yes, sir, in the province of Pampanga.

Q When?

A In the middle of this month, beginning on the 16th and up to the 18th.

Q Why did you go to the province of Pampanga?

A By order of the Collector of Internal Revenue, to ascertain whether the Chinese in that section know

how to write up their sales in English, Spanish or the local dialect of the province.

Q And what did you do in order to ascertain whether the Chinese merchants of Pampanga could write in English, Spanish or any local dialect?

A I made a general inspection, as we call it, and I asked for a list of the articles sold by the Chinese.

Q By the Chinese of what establishments?

A Of the establishments in the province of Pampanga.

Q What municipality of the province of Pampanga did you visit in that inspection?

A The municipalities of San Fernando, Bacolor, Guagua, Angeles and Magalan.

Q Why did you only travel through those municipalities?

A In the first place, for lack of time, I couldn't cover all of the municipalities of Pampanga, and in the second place, because those are the municipalities which have many Chinese merchants.

Q And what did you do in those municipalities in order to obtain those copies of lists of articles sold by those mercantile stablishments, in those municipalities visited by you?

A I entered each one of the Chinese establishments located there and I asked each one for a copy of the list of the articles sold by it.

Q And in each one of the establishments which you visited in the province of Pampanga they gave you such copy of their list?

A Yes, sir.

Q Where are those copies of lists mentioned by you?

A They are in the possession of the Collector of Internal Revenue.

Q Mr. Posadas?

A Yes, sir.

Q Who wrote those copies of lists mentioned by you?

MR. GIBBS: I object to the question as not calling for the best evidence.

A The Chinese who were in the tiendas. I believe that some of them were the owners of the tiendas, and some the managers or employees.

Q In whose presence were those copies of lists made?

A In my presence.

MR. GIBBS: We move to strike out the testimony of this witness on the ground that it refers to alleged writings which have not been produced, identified or offered in evidence, and on the ground that the testimony of the witness with reference to such documents is not the best evidence.

MR. FELIX: We object to the motion to strike out on the grounds already set forth in connection with the testimony of the previous witnesses, as the invoices obtained by this witness and by the former witnesses, agents of the Bureau of Internal Revenue.

CROSS-EXAMINATION BY MR. GIBBS:

Q How many establishments did you visit?

A A matter of sixty.

Q Had you ever visited their establishments before?

A No, sir.

Q None of them?

A Not one, that I remember.

Q Did you explain to them that you were an Internal Revenue Agent?

A Yes, sir, I told them.

Q Did you tell them why you wanted these lists?

A No, sir.

Q Did you tell them that the Collector of Internal Revenue had ordered you to obtain them from them?

MR. FELIX: The question has already been answered and I therefore object to it.

A No, sir, there was no necessity for that.

Q Did you obtain just one list from each Chinaman?

A Yes, sir, just one list from each of those Chinese whom I visited.

Q And it made no difference whether there was more than one article written in the list or not?

A How do you mean, it made no difference.

Q Did any of those establishments have any employees other than Chinese?

A I don't remember having seen any.

Q All of the employees in the Chinese stores in the provinces are Chinese, are they not?

A I don't know, but according to my observation those people who made the lists were all Chinese.

Q But you know, don't you, whether there were any employees other than Chinese in any of those sixty establishments?

A I don't remember.

Q You don't remember having seen any employee other than Chinese?

A I don't remember.

Q Are you a regular inspector of the Bureau of Internal Revenue?

A Yes, sir.

Q What particular inspection work do you do?

A Inspecting the stores of—

Q Do you inspect the books of account of the Chinese?

A The Internal Revenue books which they customarily use in making entries of their sales and which they use in making returns of those sales every quarter to the treasurer of the municipality.

Q Do you inspect the books of the Chinese merchants in their establishments?

A You mean during this inspection that I made?

Q At any time?

A Not the books which are written in Chinese characters.

Q Among your duties, do you inspect any books of the Chinese tiendas?

A Well, it all depends; if there is any necessity for it, or if there is a special order to do so, I do it.

Q So that all you know about the ability of any of these Chinese in these establishments to read or write any language other than Chinese is what you learned from the copies of the lists that you obtained?

A It seemed to me that all the Chinese who gave me those lists were able to furnish them to me with great ease.

A And the manner and the correctness of the writing appears in the documents themselves?

A Do you mean to say that the manner of their writing is—

Q Whether they wrote it well or poorly appears from the writing itself?

A They wrote it well, according to my judgment.

Q And we could judge from this writing much better than from what you say; isn't that true?

MR. FELIX: We have already stated that we are willing to produce these documents under certain conditions.

A I don't understand the question.

(The question was then repeated.)

A It seems to me that it is alright.

Q Your word is sufficient to establish whether these sixty Chinese can keep their books in a language other than Chinese?

MR. FELIX: I object to the question on the ground that it is based upon something as to which the witness has not testified. He has confined himself to testifying only that in his presence certain copies of lists have been made and nothing more.

Q You are convinced that each and every one of the Chinese owners of the sixty establishments that you visited can keep their books of account in English or Spanish or some local dialect divinely?

A I can't say, but I saw very plainly that the lists that they gave to me they made out with great ease.

Q Did you take the name of every person who wrote each list?

A I didn't make a record for myself, but in the list appear the names of the Chinese who wrote down those articles.

Q The Chinese who signed it in each case.

A Yes, sir.

Q The Chinese who wrote it in each case also signed it?

A Yes, sir.

Q Why did he sign it?

A Because they were required to sign as proof that they made out what they wrote above.

Q Have you, yourself signed any of those documents that you obtained from the sixty Chinese?

A I don't remember having signed any.

Q You didn't put any mark of identification on them?

A May be I put some sort of a check or some sort of a number on them.

Q You think perhaps one could be found on there if it were necessary, do you, in order—

A You mean whether they are mixed up with other papers?

Q You think that if it is necessary to find your mark on there, it will be found when it is wanted, do you?

MR. FELIX: I object to the question on the ground that it constitutes an offensive insinuation against the witness, and attorney for petitioners has no right to offend any of the witnesses of the respondents.

Q Did you put any mark on them?

A I don't exactly remember what kind of mark I put on there, but I remember I marked some of them in some way, but I don't remember now.

Q In each one of these documents, did you have the name of the establishment, the firm name, signed, or did you have the name of the individual who copied the lists signed?

A In some of the stores I required them to write the name of the firm and the name of the manager, or of the man who wrote the list.

Q Did you explain to them why you wanted the copy in that form?

A I did not.

Q Did you order them to do that as an Internal Revenue agent, or how did you succeed in obtaining it from them?

A Oh, I obtained it from them in a very easy way, in a friendly way.

Q What threats did you make to obtain them?

MR. FELIX: I object to the question, and I inform the witness that he is not obliged to answer that question, because it is offensive. The attorney for the opposing side has no right to offend my witnesses.

A I consider myself offended by that word.

Q You are offended, are you? You don't look as though you are very much offended?

A You should be a little bit more considerate, Mr. Attorney, I beg of you. I am under oath here speaking the truth, and there was no threat.

Q Did any of them embrace you as an expression of their gratitude for having them and extracted this information from them

MR. FELIX: I object to the question on the ground that it is merely a method of ridiculing the witness and offending the court, and that it displays a lack of respect toward the Supreme Court, which must read that answer.

A Oh, no; some of them shook hands with me, because I was very kind to them.

Q You not only forced them to furnish you this information, but you forced them to shake your hand after you got it from them?

MR. FELIX: I object to the question, in the first place, on the ground that it is immaterial, and in the second place, that it is based upon a false asumption, which is that he obliged them to give him the information which he desired.

A No.

Q Are there any rules or regulations which authorize you to obtain such copies from them and make them sign them?

A Why, we are authorized to get any information from the merchants provided we keep it secret.

Q Provided you keep it secret?

A Yes.

Q You haven't been keeping it secret while you have been testifying it, have you?

MR. FELIX: I object to the question; testimony of the witness is itself the best evidence.

A I don't believe there is any question about that, because the fiscal says that we will have to produce that as evidence if the Supreme Court so orders, so there is nothing to that.

Q Did you ever before demand or receive fromany Chinese merchants a copy of a list like those that you obtained on this last inspection trip that you speak of?

MR. FELIX: I object to the question on the ground that it is immaterial.

A I didn't demand it, but I requested it of them.

Q Did you ever request such information before from these or any other Chinese merchants?

A Maybe I did, but I don't remember it.

Q You don't know of any possible reason for obtaining such information except for the purpose of divulging it here as evidence, do you?

MR. FELIX: I object to the question on the ground that the witness has already testified as to why he proceeded to obtain these lists, and in the second place, on the ground that what the witness has testified here does not constitute a divulgation of the information obtained from the merchants whom he visited in his recent trip of inspection.

A It seems to me that I need not answer that question any further, because I have already given an answer similar to the one that I would give to that question; that is, I believe that I have already given an answer to that question.

Q You understand that this information which you obtained should not be divulged, do you?

A Not unless the Supreme Court so orders.

Q And your idea, and the idea of the Collector of Internal Revenue, is that you can divulge it verbally, thereby giving secondary evidence of the contents of the documents, is it?

MR. FELIX: I object to the question on the ground that it is based upon a false assumption, which is that the witness is divulging the contents of the lists obtained by him on his inspection trip, which is something that does not appear in his testimony.

A No, I havent' any such idea.

There being no further questions, the witness was excused, and withdrew.

The hearing then, at 4:30 o'clock p. m., was continued until Friday, December 28, 1923, at 2:30 o'clock p. m.

Friday, December 28, 1923.

The hearing was continued at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Estanislao Alfonso, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q What is your name?

A Estanislao Alfonso.

Q How old are you?

A 37 years old.

Q Your occupation?

A Tobacco inspector in the Bureau of Internal Revenue.

Q Where are you stationed, or where do you reside?

A I seride in Manila.

Q What are your duties, Mr. Alfonso, as tobacco inspector in Manila?

A My duties are to inspect the books of the L-3 dealers, that is, the wholesale leaf tobacco dealers.

Q In what language is that L-3 registry book kept in accordance with the regulations of the Bureau of Internal Revenue?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence.

A In Spanish or English.

Q Are you the one who has charge of inspecting all the L-3 books of the wholesale leaf tobacco merchants in the City of Manila?

A Yes, sir.

Q Do you know in what language the books of the Chinese wholesale leaf tobacco dealers in the City of Manila are kept? I refer to that book which you call the L-3 book.

A One more question before I answer: they are not Chinese books; they are the official registry books furnished by the Bureau of Internal Revenue that are written in English and Spanish—that is, in English, and under the English a translation in Spanish.

Q And the blank forms, in what language must they be filled out?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence.

A The same; it is an exact copy of the official registry book.

Q You don't understand my question; my question was, in what language must the blank spaces in the L-3 book be filled out?

A Well, I can say that they fill the blanks in Spanish or in English, because it is just only the name and the address. I can't say whether it is Spanish or English, because if you ask me, it is the same in Spanish or English.

Q What data are required to be filled in that L-3 book that you inspect?

A On the debit page, the name of the vendor, the address of such dealer, the number of bales of leaf tobacco purchased, the standard weight and the net weight, and also the date when the tobacco was received; and on the credit page, the name of the purchaser, the address, the number of bales sold, the standard weight and the net weight, and also the date of sale. It must be understood that the net weight is shown only when the tobacco is sold to tobacco manufacturers or to retail leaf tobacco dealers.

Q Now, how must all those data which you say are entered both on the debit page and on the credit page be written? In what language or dialect must these blank spaces in these two pages, debit and credit, be filled out?

MR. GIBBS: I object to the question on the ground that it calls for something which must be a matter either of law or of regulations of the Bureau of Internal Rev-

enue, in which event the law or the regulations is the best evidence, and not the testimony of the witness.

MR. FELIX: The object of the question and of the testimony of this witness is to demonstrate that the Chinese wholesale tobacco merchants of the City of Manila can keep their books in English or Spanish, inasmuch as they can, and in fact do, keep the L-3 registry book in either of those languages.

MR. GIBBS: I desire to ask the fiscal if he has here one of those forms which are called L-3?

A Mr. Felix: I have not.

MR. GIBBS: I ask that one of them be produced for the purpose of offering it in evidence.

MR. FELIX: I have no objection. I can have one here for the next session.

A In English or Spanish, as I have stated before. I can say that it is either English or Spanish, because you can read it.

Q Do you know how many Chinese wholesale tobacco merchants there are in the City of Manila?

A Yes, sir.

Q How many are there?

A There are fifteen Chinese L-3 dealers.

Q All of those fifteen Chinese wholesale tobacco merchants of the City of Manila keep the L-3 registry book in Spanish or English?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence.

MR. FELIX: It is the best evidence under the circumstances.

A The L-3 registry book, yes, they have.

CROSS-EXAMINATION BY MR. GIBBS:

Q Does the Bureau of Internal Revenue furnish those L-3 registry books to the L-3 dealers?

A Yes, sir.

Q Did you bring one of the forms along with you?

A I didn't bring any with me now.

MR. FELIX: We can furnish that for you.

Q The book is a simple form book in which the name of the dealer, the dates and the amounts are filled in, is it not?

A Yes, sir.

Q Are those L-3 dealers permitted to keep those registers in a local dialect?

A Besides English and Spanish?

Q Yes.

A No, they are not permitted.

Q Are the requirements with reference to the keeping of those registration books set out in a regulation of the Bureau of Internal Revenue?

A Yes, sir. One more question: suppose I forgot something in the debit and credit pages, can I add it now? I remember it now.

MR. FELIX: Yes.

MR. GIBBS: Better wait until you get through with these questions.

Q That is a printed regulation of the Bureau of Internal Revenue?

A Yes, sir.

Q Are those registration books the only books of account that the L-3 dealers keep?

A No, there are more books of account.

Q And the other books of account, in what language do they keep them?

A Some are in Spanish, some in English, some in Chinese.

Q Do you know of any Chinese L-3 dealer in tobacco who keeps his books of account outside of the registration book, in any language other than Chinese?

A You mean the books are written—

Q The regular books of account?

A You mean the books of account in Chinese?

Q The books of account of the Chinese dealers—in what language do they keep their books of account, that is, the other books? You say they have to have other books of account in addition to this L-3 registry book: Now in what language are those other books of account of the Chinese merchants kept?

A They have Chinese books.

Q Then, if I understand you correctly, all of the L-3 Chinese dealers keep all of their books of account in Chinese, except the registration book of the Bureau of Internal Revenue; is that true?

A Yes, sir, some, not all of them—you mean those fifteen, or all?

Q All the Chinese dealers—I am not talking about other dealers—do they all keep their books of account in Chinese except the L-3 registration book?

A Yes, sir.

MR. GIBBS: I move to strike out the testimony of the witness for the reason that it deals exclusively with a form book furnished by the Bureau of Internal Revenue which has not been produced in evidence and which is the best evidence of the form in which it is kept.

MR. FELIX: I object to the motion to strike out for the simple reason that, even though it be true that the L-3 book is a form book nevertheless the blanks must be filled in in ordinary characters, in other words, not in Chinese characters, which proves that the Chinese wholesale tobacco merchants of the City of Manila can write and keep their books in English or in Spanish. I should also state that, as I recollect, the attorneys for opponents, during the course of tehir examination, asked for a copy of that form book, which copy we are prepared to deliver to them at the next session, and from which it can be ascertained what is required to be filled in, which will still more thoroughly explain the testimony of this witness.

MR. GIBBS: It is not the duty of counsel for the petitioners to present the best evidence upon any subject for the benefit of the respondents, and our request for the production of this document having been made for the purposes of the cross-examination of the witness and the same not having been produced, we insist upon our motion to strike out the testimony.

MR. FELIX: In reply to the statement of counsel for opponents, I desire to state that we thought that counsel for petitioners asked for a copy of the book in order to produce it in evidence, but in view of what has just been stated, we will make delivery of a copy of this book to be introduced into evidence in connection with the testimony of this witness. For this reason, we object to any motion to strike out the testimony of this witness.

MR. GIBBS: The book not being presented in time to cross-

examine the witness with reference thereto, its presentation hereafter will be too late.

MR. FELIX: In any event, we will recall this witness in order to produce a copy of that book, which I will produce at the next session, and for that purpose we reserve the right to recall him.

There being no further questions, the witness was excused and withdrew.

Mariano B. Canas, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A Mariano B. Canas, 26 years of age, agent's assistant of the Bureau of Internal Revenue, residing at 66 Calle Muralla, Intramuros, Manila.

Q Where do you work as agent's assistant of the Bureau of Internal Revenue?

A In the province of Rizal.

Q How long have you been agent's assistant of the Bureau of Internal Revenue in the province of Rizal?

A Since 1921.

Q What are your duties as agent's assistant of the Bureau of Internal Revenue in that province of Rizal?

A To inspect the tiendas and the returns of taxes, and to see whether the tiendas have the necessary licenses for the articles that they sell.

Q As such agent's assistant of the Bureau of Internal Revenue, and your duties being the inspection of the books of the merchants of the province of Rizal, can you state if the Chinese merchants of that province

speak and write Spanish, English or any local dialect?

MR. GIBBS: I object to the question on the ground that it is incompetent and that no foundation has been laid for its admission, the witness not having demonstrated his qualifications to answer it.

MR. FELIX: I will withdraw the question, and put another one.

Q Have you complied with your duties of examining the tiendas of the Chinese merchants in the province of Rizal and in inspecting their books?

A Yes, sir.

Q Now, then, can you state whether or not the Chinese merchants of the province of Rizal know how to read and write English, Spanish or any local dialect?

MR. GIBBS: I object to the question on the ground that it is incompetent and that no foundation has been laid for its admission.

A Yes, I can state that.

Q What can you say upon that subject?

MR. GIBBS: I make the same objection, that no foundation has been laid for its admission, the witness not having shown his qualifications to testify on that subject.

A I can say that nearly all of the Chinese merchants in the province of Rizal are making out their sales books in Spanish characters, and at the same time those Chinese merchants can deal with customers in Tagalog.

Q In the performance of your duties as agent's assistant of the Bureau of Internal Revenue in the province of Rizal have you spoken to the Chinese merchants of

that province and with their employees of the same nationality as themselves?

A Yes.

Q In what manner did you communicate with them?

MR. GIBBS: I object to the question on the ground that, the witness not having given the names or addresses of the persons with whom he may have talked, we have no means of ascertaining the truth of his statement nor of contradicting it. For that reason, there is no proper foundation laid for that testimony.

A In Tagalog.

Q Have you had any difficulty in your conversations with the Chinese merchants and their Chinese employees in understanding them or making yourself understood by them?

MR. GIBBS: I object to the question for the same reasons.

A No.

CROSS-EXAMINATION BY MR. GIBBS:

Q How many Chinese stores or establishments are there within your jurisdiction, Mr. Canas?

A I can't give the exact number.

Q Well, approximately?

A I can't give it.

Q You can't even approximate the number?

A I can't approximate the number; I don't have any idea.

Q Can you give the names or addresses of any of those Chinese merchants with whom you held conversation?

A I could only say that they are in the province of Rizal.

Q So that, if we wished to ascertain whether your state-

ments about them are correct or not, we would have no means of doing so, would we, so far as you know?

MR. FELIX: I object to the question on the ground that it calls for a conclusion of the witness.

A Well, if you want to know the veracity of my statements, you can investigate the merchants in the province of Rizal.

Q I am not casting any reflection on your veracity; I am just simply asking you, if we desired to find out whether your statements are correct as to any of the Chinese with whom you conversed being able to speak Tagalog, we would have no means of doing so, would we, without the names and addresses of the Chinese?

A Well, to talk to those merchants one by one in the province of Rizal, I think that's the only means by which you can get the truth of my statement.

Q Have you talked with them one by one for the purpose of finding out whether they could talk Tagalog or not?

A Yes.

Q When?

A During my inspection.

Q When was that?

A On any days during the year, because we internal revenue agents use to inspect the stores every day, and naturally, when we go in a store, we deal with the tax-payer, the Chinese merchant.

Q Have you personally inspected all the Chinese stores or establishments in the province of Rizal?

A Almost all of them.

Q But you have not inspected all of them, have you?

A I should say all of them.

Q Don't you have any assistance in making these inspections?

A I don't have any.

Q Are you the only inspector in the province of Rizal?

A Yes, sir.

Q Within the last year, have you visited all of the Chinese establishments in the province of Rizal?

A Yes.

Q Do you know the names of the owners of each of those stores?

A I can't give you the names right now, but we give a report of the stores inspected.

Q When you made those inspections, did you keep any memorandum of the person or persons with whom you talked in each store?

A We don't usually keep a memorandum of every person to whom we talk in a store.

Q And if you converse in Tagalog with any person in any particular store, you don't keep the name of the person with whom you converse?

A I did not.

Q And therefore you can't tell us whether you conversed with the proprietor of the store or with one of his employees?

A Now, when we inspect a store—I will explain—when we inspect a store, we see the license; now, taking it for granted, for example, that the name of Co Siang appears in the privilege tax receipt, the first question that the agent of the Internal Revenue asks is where Co Siang is, in order to deal directly with the proprietor of the tienda.

Q And what you mean to tell the court is that you never

found an owner of any Chinese store in the province of Rizal who could not talk fluently with you in Tagalog?

A I mean to say that those owners and merchants in Rizal are talking fluently in Tagalog.

Q All of them?

A All of them.

Q And all of the employees?

A And all of the employees.

Q It doesn't make any difference whether the Chinaman has been here six months or ten years, he can talk Tagalog fluently?

A It depends, of course, on the number of years. If he has recently arrived, of course he can't talk, but as to my experience in Rizal, I haven't encountered any difficulty in dealing with the merchants, as well as the employee.

Q Do you mean to say that there are no recently arrived Chinese merchants in the province of Rizal?

A I haven't met any of them in the province of Rizal.

Q They have all been there long enough to become fluent scholars in Tagalog?

A I don't know, because when I talked with them, they could talk fluently. I don't know whether they have just arrived or whether they are there for years.

Q But you are willing to swear that every Chinese proprietor in Rizal and every Chinese employee in Rizal speaks Tagalog?

A They all speak Tagalog.

Q They all speak Tagalog fluently?

A They speak Tagalog.

Q Do they speak Tagalog fluenly, or not?

A Well, the word "fluently" is very hard term—it is very ambiguous.

Q Do they all speak it well?

A I could only say that they speak it, but I couldn't give any adverb to modify the word speak.

Q Do you mean to say that you have talked personally with Chinese proprietor and every Chinese employee in the province of Rizal? Yes or no?

MR. FELIX: He has a right to answer the question in his own way.

MR. GIBBS: That question is answerable by "yes" or "no."

A Well, in the inspection of an Internal Revenue agent, it doesn't mean that all the employees, all the members, of the store you are going to speak with.

Q Will you answer my question yes or no, or will you not? You don't have to, but I am asking you whether you will answer my question yes or no, or not.

MR. FELIX: The witness has a right to explain his answer if he has not finished it.

A I am explaining the actual work of the agents.

Q That is not what I asked you. Will you please respond to my question and answer, yes or no, whether you have talked personally with all of the Chinese proprietors and all of the Chinese employees in the province of Rizal?

MR. FELIX: I object to the question on the ground that it is indefinite; it doesn't state whether it refers to one occasion or to many occasions.

MR. GIBBS: He can go back over his whole life, if he wants to, to answer the question.

A I can answer yes or no, but I am going to explain before answering it.

Q Then you will not answer yes or no—will you do so, or not?

MR. FELIX: The witness has a right to explain his answer.

MR. GIBBS: He has made his explanation. I want to know whether he is going to answer yes or no.

A I am going to answer yes or no, but I am going to give an explanation first.

Q You have already explained, have you not?

A You haven't thoroughly heard my explanation: when an agent goes in a tienda, when he inspects a store, it doesn't mean that if there are ten employees in the store you are going to speak to each and every one of them. We talk only to the employees that it is very necessary for us to deal with.

Q But nevertheless you are able to swear positively that each and every one of the Chinese proprietors and the Chinese employees in the province of Rizal speak Tagalog?

A They speak Tagalog; those to whom I have spoken I haven't found any difficulty, but I don't mean to say that all the members in the store, I have spoken to all of them.

Q But you know, without ever having spoken to them and without ever having heard them speak in Tagalog, that they do speak Tagalog well?

A Well, I could say that I just had my point of view to the persons that I talked to.

Q Do you wish to retract or modify the statement that you have heretofore made to the effect that all of the Chinese proprietors and all of the Chinese employees speak Tagalog?

A In that statement of mine, I just only referred to those to whom I have spoken and talked.

Q You yourself don't speak Spanish?

A I talk a little, but not fluently.

Q But you had to have the question of the fiscal which were put to you in Spanish translated to you before you could answer?

A Yes.

Q So that you are not a judge of whether or not the Chinese merchants in the province of Rizal speak Spanish well?

A Well, I could say that they only speak Tagalog.

Q They only speak Tagalog?

A Yes, they speak Tagalog.

Q You don't know whether they speak Spanish or not, do you?

A I haven't dealt with any of them in Spanish.

Q Did you ever tall with any of them in English?

A I haven't tried to.

Q I what language do the Chinese merchants of the province of Rizal keep their books?

A I find that the sales books are all in Spanish characters.

Q All Spanish?

A Yes, Spanish.

Q How do you know whether they are in Spanish or not? You can't read Spanish, can you?

A I could give you some figures now in Spanish.

MR. FELIX: I object to the question on the ground that it is based on an assumption which does not appear in the record, which is that the witness does not read Spanish.

Q What you mean to say is that the figures were in Spanish?

A Yes, figures in Spanish.

Q What is the difference between figures in Spanish and in Tagalog?

A They are almost the same, except a difference in wording.

Q As I understand you, the only book that the Chinese merchants keep in any language other than Chinese is the Internal Revenue sales book?

A Some of them; some who have larger capital keep private books in the Chinese language, but those tiendas, besides keeping private books in Chinese, they still have sales books in Spanish characters.

Q You mean in Arabic numbers?

A Yes, Arabic numbers.

Q Do you find any of those fluent Tagalog scholars among the Chinese merchants keeping their books in Tagalog?

A You mean that there are Filipino employees employed by the Chinese?

Q I mean the Chinese.

A Whom do you refer to as fluent scholars?

Q The Chinese merchants that you said spoke Tagalog so well.

MR. FELIX: I object to the question on the ground that it assumes a fact not testified to by the witness, which is that they are fluent scholars.

A I can't answer that question.

Q Did any of those Chinese merchants with whom you talked speak Tagalog well?

A They spoke Tagalog, and I said beforehand that I

couldn't use any adjective or adverb to modify my words. They speak Tagalog.

Q Are you an educated Tagalog scholar?

A We don't have any schools here in Tagalog,—we have here Spanish and English,—so I can't say that I am educated in Tagalog.

Q So you don't know whether the Chinese merchants speak Tagalog well or not, do you?

A Well, I said they speak Tagalog; I don't know whether it is bamboo Tagalog or good Tagalog.

Q You don't know whether it is good Tagalog or bamboo Tagalog?

A I don't know.

Q In those inspections that you made, you found that all of the employees of those Chinese merchants were Chinese, did you not?

A They are Chinese.

Q You didn't find any Filipino employees among them?

A I haven't seen any.

REDIRECT EXAMINATION BY MR. FELIX:

Q In these Internal Revenue sales books, how are the sales shown of goods in amounts greater than fifty pesos?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence, one of the forms of sales books of the Bureau of Internal Revenue having already been offered in evidence, as I recall.

A Well, I would like to ask the question here as to the ways it is purchased, whether the fifty peso purchase is made by one person or by several persons.

Q By one person.

A Well, the Bureau of Internal Revenue has a regulation

requiring every tienda keeper to post the name, as well as the address, of all buyers of goods in amount of fifty pesos or more.

MR. GIBBS: I move to strike out the testimony of the witness as to the regulation of the Bureau of Internal Revenue, on the ground that it is not the best evidence.

MR. FELIX: I object to the motion to strike out, because the question is only a preliminary one.

Q Now, then, in those inspections that you made of the Chinese establishments in the province of Rizal, have you seen, in the sales books of these Chinese merchants, whether sales of goods in amounts greater than fifty pesos were set forth?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence.

A Sometimes, yes.

Q How were the characters written, which referred to those sales of over fifty pesos--in what language or dialect.

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence.

A It was written in Tagalog.

Q Do you speak Chinese?

A I do not.

Q Do you write Chinese?

A No.

Q In your inspections which you made of the books of the Chinese merchants of the province of Rizal, upon whom or upon what must you rely?

A I rely wholly upon the information of the Chinese merchants.

RECROSS-EXAMINATION BY MR. GIBBS:

Q This regulation that you speak of, is that Regulation No. 34?

A Besides that Regulation No. 34, we got already a previous regulation for that?

Q What regulation was that?

A I couldn't exactly give you the number.

Q Can you give the date of it?

A Neither.

Q You referred to a regulation with reference to keeping the sales books, did you not?

A What do you mean?

Q The previous regulation, the one previous to No. 34.

A Well, the previous regulation to No. 34 requires the merchant to post the name of the buyer and the address of the buyer if he makes a purchase of fifty pesos or over.

Q But you don't know what the number of that regulation or the date is?

A I couldn't exactly give it to you.

Q Has that regulation been complied with by the Chinese merchants?

A I can't tell.

Q Don't you know, as a matter of fact, that they have not complied with it because they are not able to do so?

A Those Chinese merchants previous to Regulation 34 were already keeping books in Arabic figures.

Q Don't you know that the Chinese merchants have in no cases complied with the regulations requiring the names and addresses of purchasers of more than fifty pesos worth of merchandise to be entered?

A They are required to.

Q But don't you know that that part of the regulation has never been complied with by any of the Chinese?

A Well, some of those merchants who have made a sale of fifty pesos or more, why, they must post the name of the buyer.

Q Well, I am asking you whether, as far as you know, any of them have ever done it?

A Well, I can't tell, but they are supposed to do it. You can't force a merchant to post in the sales book the name of a buyer. I mean to say that in the inspection, if the agent didn't see any name of the buyer in the sales book, it doesn't mean that they have not complied, but that they did not reach the limits provided in the regulation of the Internal Revenue. Consequently, I conclude that they are to comply if they will reach the amount prescribed by the regulation.

Q But you personally, in your inspections, have never known of any Chinese merchant having made such an entry as that in his books?

A I couldn't exactly remember.

Q Don't you know that that is a regulation issued under and by virtue of Act No. 2972, and that its operation has been suspended with that of Act No. 2972?

MR. FELIX: I object to the witness being informed and told as a fact something which is not true; it is improper cross-examination.

A I can't answer that.

Q Is it not a fact, Mr. Canas, that you accept the Bureau of Internal Revenue sales books kept in Chinese?

A I don't understand the question clearly.

Q Is it not a fact that some of the Bureau of Internal Revenue sales books are kept by the Chinese merchants in Chinese?

A Well, I haven't seen it in Rizal.

Q But you can't testify that none of the Chinese merchants in the province of Rizal keep their internal revenue sales book in Chinese, can you?

A I couldn't exactly remember, but as far as I remember, almost 99% of them are using Internal Revenue Sales Books kept in Arabic figures. There must be perhaps one or two which is of a nature impossible for me to remember.

Q Well, as an internal revenue agent, you are obliged to accept them, even if they are kept in Chinese, are you not?

MR. FELIX: I object to the question on the ground that it is immaterial.

A We are required to, but it would not be able for the internal revenue agent to check the books in Chinese.

There being no further questions, the witness was excused, and withdrew.

The hearing then, at 4:15 o'clock p.m., was continued until Wednesday, January 2, 1924.

Wednesday, January 2, 1924.

The hearing was continued at 2:30 o'clock p. m. the commissioner, the attorneys for both parties, and the reporters being present.

Estanislao Alfonso, who had previously testified, was recalled as a witness on behalf of the respondents, reminded by commissioner that he was still under oath, and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q In that work of inspection to which you referred in your testimony the other day, are the cigar and cigarette factories included?

A No.

Q The other day you also agreed to bring the L-3 Registry Book; have you brought that here now?

A Yes.

Q Where is it?

A (The witness indicating an internal revenue form book.) That one there, composed of various pages identical to Exhibit 14, with the sole addition of the words "Transcript Sheet—Hoja de Traslado", which do not appear in the pages in the book.

Q Handing you this other page, which for identification is marked as Exhibit 15, I ask you if you recognize it?

A Yes, I do.

Q Why do you recognize it?

A Because I see them every day.

Q In connection with your duties?

A Yes.

Q Do you know for what purpose that sheet, Exhibit 15, is used?

A Yes, it is used for any removals of leaf tobacco made by the L-3 wholesale dealers.

Q Removals from where?

A Removals from the warehouse.

Q From whose warehouse?

A From the warehouse of the holder of that L-3 official registry book. The vendors of tobacco are the ones

who used that sheet, Exhibit 15, in sales or removals of tobacco.

Q Who fills out the blank spaces in that sheet, Exhibit 15, or whose duty is it to fill them out?

A Sometimes the employees, sometimes the managers of the business.

Q In what language or dialect must the blank spaces on this Exhibit 15 be filled out?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence, the rules and regulations of the Bureau of Internal Revenue, or the law bearing upon the subject being the best evidence.

A In English or Spanish.

Q Those fifteen Chinese mercantile houses which you inspected keep those books, the pages of which have been marked as Exhibits 14 and 15?

MR. GIBBS: I object to the question as not calling for the best evidence.

A Yes.

CROSS-EXAMINATION BY MR. GIBBS:

Q How long have those forms represented by Exhibits 14 and 15 been in use by the Bureau of Internal Revenue?

A I can't state exactly just now.

Q Can you state approximately?

A Well, yes, about 1911.

Q All the requirements with reference to filling out and furnishing the information contained in the forms represented by Exhibits 14 and 15 are the subject of

printed regulations of the Bureau of Internal Revenue?

A Yes, sir, they are in accordance with the regulations.

Q Have you seen those dealers fill out all the forms that they have furnished to you in each case?

A You mean the L-3 dealers?

Q Yes.

A Not all the time; some of them fill the blanks themselves, and some have it done by their employees.

Q You mean to say that those blanks are made out while you are there, or do they have them ready for you when you call?

A No, I saw them fill them out only sometimes, when I was there, but not all the time when they make the entries am I there, just occasionally, when I was there in the office.

Q You didn't see any of them make out any of those forms, did you?

A Sometimes.

Q Who?

A The L-3 dealers, the owners.

Q What owner did you ever see make one out? Give the name of the owner that you saw fill out one of those forms.

MR. FELIX: I object to the question on the ground that it is wholly immaterial.

A You mean Chinese, or other L-3 dealers?

Q I mean Chinese L-3 dealers.

A You didn't refer to Chinese L-3 dealers.

Q Have you ever seen any Chinese L-3 dealer fill out any of those forms?

A Yes, I remember one, Antonio So.

Q Is he the only Chinese dealer you ever saw fill out one of those forms?

(The witness referred to a memorandum.)

Q Now, you are looking at a paper: have you anything on the paper that tells you whether the Chinese dealers make out the forms in your presence or not?

A Chinese, yes; not the owners—there are some employees of the Chinese who fill those out.

Q Yes, but have you any notation or memorandum anywhere which tells you whether or not a Chinese dealer or a Chinese employee filled out the form in your presence?

A No, I have not.

Q So that the only thing that you have to resort to for that information is your memory, is it not?

A No, I have here a list of all the L-3 dealers in the City of Manila.

Q But in what way does that help you to remember whether they filled out these forms in your presence or not?

A Because I can't remember this list at once, in an instant.

Q Do the regulations require them to make them out in your presence?

A No.

Q And is it not a fact that they have them ready for you when you call there, and you take them?

A No.

Q Well, what is the fact about it?

A It happens only when I am inspecting their books, if they are filling in the blanks, especially when they make the sale, I see them fill the blanks.

Q Did you see them fill all these blanks?

MR. FELIX: I object to the question on the ground that the witness has already answered that several times.

A Sometimes I see.

Q Now, what was this man's name—Antonio So?

A Yes.

Q When did you see him fill out a blank, and which one of these blanks was it, Exhibit 14 or 15?

A I couldn't at present tell you when.

Q Which one of the blanks was it that you saw him fill out?

A Both Exhibits 14 and 15.

Q Just writing in the figures?

A Yes.

Q Take Exhibit 14: when the dealer receives the tobacco, does he fill out this Exhibit 14 and take it to the Bureau of Internal Revenue—where does he deliver it to you?

A When he receives the tobacco he, or most of the time his employees, make the entry on the debit page.

Q I understand that you are here to testify that the proprietor or the employee makes the entry but I am not asking you that now—you have sworn to that three or four times. I am asking you to answer as to where these are delivered.

A That transcript sheet?

Q Yes, when it is filled out.

A To our office, the Bureau of Internal Revenue.

Q The dealer takes it there, or his employee takes it there, and delivers it to you, doesn't he?

A His employee delivers them to our office.

Q Usually a messenger delivers it, doesn't he?

A The same thing—his messenger.

Q Is it inclosed in an envelope when it is delivered?

A I can't tell you that—I am not the one who receives them.

Q Now, when it is filled out, are you present in his store where he fills it out?

A When that form is filled?

A Yes.

A I told you many times it is only occasionally; it happens only when I am in his office that I see that, but not all the time.

Q Do you go to his office and get them from him at his office?

A Well, I can't answer a question that I don't understand thoroughly.

Q Do you go to his office and get them from him at his office?

A No.

Q He fills out the forms in his own establishment and he sends them by messenger to the Bureau of Internal Revenue, doesn't he?

A Yes, he sends.

Q That is true of Exhibit 15, is it?

A Yes.

Q So that the first time any of you see these forms filled out is when they reach the office of the Bureau of Internal Revenue?

A No, I don't see that form when they are filled; once in a while only I see, not all the time.

Q Well, if you ever saw any one of them filled out, it was a mere accident when you happened to be in there, wasn't it?

MR. FELIX: I wish to make it clear that the attorney for

the petitioners r[illegible]rs to the transcript sheets which we have here, and the witness is probably not referring to the transcript sheets, but to the L-3 registry book. I want to make that clear in order to avoid any confusion.

A We see them in our office.

Q You receive these in your office when they are delivered by messenger?

A No, that is when I need that copy in connection with my investigation. I need to see that copy.

Q Which one are you referring to, Exhibit 14 or 15?

A Both of them.

Q Now, when the dealer delivers these to the office of the Bureau of Internal Revenue, does he or does he not deliver them by messenger?

MR. FELIX: The witness has answered that question two or three times.

A I don't know about that; I am not the one who receives that transcript sheet. It happens only that I see that the messenger or the employee of the L-3 dealer brings them to our office.

Q And that's the first time you see them?

A No, not the first time; many times.

Q The only time you can ever remember of seeing anyone among the Chinese dealers filling out one of these forms was when you saw Antonio So filling one out; isn't that true?

A Chinese dealers, no; there are more Chinese, but not L-3 dealers. You should take note of that: the employees of the Chinese L-3 dealers, they are all Chinese too.

Q They don't have any Filipino employees in any of those L-3 tobacco establishments, do they?

MR. FELIX: I object to the question on the ground that it is immaterial.

A They have, some of them.

Q Are they clerks, or bookkeepers, or what?

A Well, I think they are not licensed bookkeepers—they are merely employees. They fill all those blanks—may be they are bookkeepers, but I couldn't tell.

Q So it is the Filipino employees of the Chinese L-3 dealers who fill out those blanks, is it?

MR. FELIX: I object to the question on the ground that it is immaterial.

A Some, not all of the L-3 Chinese?

Q Did you ever see any of the Filipino employees of the Chinese L-3 dealers filling out those blanks?

A Some Filipinos filling them out, yes.

Q What was the name of one of those Filipino employees of a Chinese dealer whom you saw filling out some of those blanks?

MR. FELIX: I object to the question on the ground that it is immaterial.

A A Filipino, but I couldn't remember the surname. I can give you his name, but not the whole name. The first name or the second name I can give you, but the whole name I can't remember right now.

Q What was his name—Pete?

A Rufino.

Q For whom does Rufino work?

A Lim Jenco.

Q So Rufino fills out these blanks on Exhibits 14 and 15 for Lim Jenco?

A Yes.

Q And how many of the other fifteen Chinese L-3 dealers have Filipino employees who fill out those blanks on Exhibits 14 and 15?

A There are eight Chinese having Filipino employees who fill those blanks.

Q Have you seen all eight of them doing the work of filling them out?

A Yes.

Q But you can't remember one?

A This morning I remember.

Q Which ones did you see filling out those blanks this morning?

A Tec Bi & Co.

Q Who was their Filipino employee who filled out the forms?

MR. FELIX: I object to the question on the ground that it is immaterial.

A I couldn't remember the name, but I know him personally.

A Can you remember the name of any Chinese dealer outside of Antonio So who ever filled out one of those blanks in your presence?

A I couldn't remember them all, but if you give me an opportunity to think—once I rememeber Chan Sui Ting, who is dead now since November or December of last year, I think he made the figures in the official registry book.

Q That is one witness, at least, who can't deny what you say about him, isn't it?

MR. FELIX: I object and protest against the question as being improper. He may have employees or part-

ners who could contradict the witness if it were true that the person mentioned by the witness did not know how to write in Arabic characters.

(The witness did not answer the question.)

MR GIBBS: Never mind the answer.

REDIRECT EXAMINATION BY MR. FELIX:

Q When you go to the establishments of these L-3 dealers to inspect the books, do you inspect the transcript sheets or the L-3 official registry books?

A The L-3 official registry book; that is the one I inspect.

Q During these inspections, have you made any comparison between the invoices which are received or are made by these L-3 dealers and the entries which are made in this official registry book?

MR. GIBBS: I object to the question on the ground that it is leading.

A Yes.

RECROSS-EXAMINATION BY MR. GIBBS:

Q I suppose you are a hand-writing expert, in addition to your other accomplishments, are you?

A No.

There being no further questions, the witness was excused, and withdrew.

Vicente Dujua, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A Vicente Dujua, 30 years of age, married, agent's as-

sistant of the Bureau of Internal Revenue, living at 113 Calle Luzon, Manila.

Q As agent's assistant of the Bureau of Internal Revenue, in what work are you engaged?

A In forestry inspections.

Q What are your duties in that forestry division?

A The comparison of invoices presented in the office, that is, from the municipal inspection of lumber yards, and at the same time the Internal Revenue book.

Q To what invoices do you refer—prepared by whom, or issued by whom?

A I refer to the invoices prepared by lumber yards.

Q In general?

A Yes, sir, in general

Q Do you know whether there are lumber yards managed or owned by Chinese merchants?

A Yes, sir.

Q Do you compare invoices prepared by Chinese lumber dealers?

A Yes, sir.

Q In what language or dialect are those invoices prepared or issued by the Chinese lumber merchants?

MR. GIBBS: That question is objected to as not calling for the best evidence, the best evidence being the invoices, themselves and no objection against their presentation having been interposed on the part of the Chinese merchants.

A In the English or Spanish language.

Q. What duties have you with respect to the inspection of the lumber yards of the Chinese merchants?

A As forestry surveyor of the Bureau of Internal Revenue.

Q. What else?

A And at the same time as assistant agent, inspecting the books.

Q. What books do you inspect of the Chinese lumber merchants?

A The Internal Revenue books.

Q In what language or dialect do the Chinese lumber dealers keep the Internal Revenue book?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence, the books themselves being the best evidence, and the Chinese merchants having made no objection to their presentation.

MR. FELIX: Under the present circumstances, and in view of the provisions of law relative to keeping commercial secrets, the testimony of the witness is the best evidence.

A Also in the English or Spanish language.

Q Who prepared those invoices which are issued in the lumber establishments of the Chinese merchants?

MR. GIBBS: I object to the question on the ground that no foundation has been laid for its admission.

A The Chinese clerks themselves in the lumber establishments, with some exceptions.

CROSS-EXAMINATION BY MR. GIBBS:

Q Are any of those invoices prepared in Tagalog?

A Well, I distinguish that the invoices, in view of the fact that different woods have distinct local names, they prepare them in Tagalog, such as, for example, apitong, camagon, molave, tanguile, etc., and those are in the Tagalog language or dialect.

Q The contents of those invoices consist of the names of the purchasers, the designations of the different woods which are sold, and the prices?

A Yes, sir.

Q And what number of common woods are there which are sold in these lumber establishments of the Chinese?

A Do you refer to the number of pieces—the amount?

Q No, the kinds of woods.

A Tanguile and apitong.

Q Are the Internal Revenue books of the Chinese sometimes kept in Chinese characters?

A As a general rule, no, but there are exceptions, as I have stated.

Q Some of them keep their Internal Revenue books in Chinese characters?

A Yes, sir.

Q Those Internal Revenue books which are kept in English or Spanish are filled out in your presence?

A No, sir.

Q All you know about the authors of these entries is that the books are filled out in the particular establishments in whose names the businesses are operated?

A Yes, sir.

Q You have never witnessed the preparation of those Internal Revenue books?

A No, sir.

Q And you don't know whether they are prepared by the Chinese themselves, or by Filipino employees, or by some agent outside of the establishment?

MR. FELIX: I object to the question on the ground that it is immaterial.

A No, sir.

Q Are you of Chinese descent?

A Yes, sir, I am a mestizo.

Q Do you not speak Chinese?

A No, absolutely none.

There being no further question, the witness was excused, and withdrew.

Francisco Yap Tangco, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A Francisco Yap Tangco, 32 years of age, married, assistant internal revenue agent, living at 1936 Rizal, interior.

Q Mr. Yap Tangco, will you state what your duties are as assistant internal revenue agent?

A It is our duty to examine the books of the merchants for the purposes of the 1½ per cent tax, and to see that they have all the necessary privilege tax licenses according to the class of their business, and it is also our duty to see that the regulations of the internal revenue laws are complied with by the merchants.

Q What do you do when you go to inspect some merchant's establishment?

A The first thing I do is to ask for their tax receipts, and then ask for their books.

Q What books?

A The ledger, the cash book and the daybook.

Q The tiendas of what class of merchants—of what nationality—do you inspect?

A English merchants, Americans, Filipinos, Spaniards,

Chinese, and other merchants doing business here in the city.

Q In case you inspect a Chinese mercantile establishment, what books do you ask for?

A The internal revenue book.

Q Have you asked for it in the inspections which you have made of the Chinese mercantile establishments?

MR. GIBBS: I object to the question on the ground that it is incompetent and immaterial.

MR. FELIX: This is merely a preliminary question.

A Yes, sir, I always ask for that internal revenue book.

Q Can you state in what language or dialect the internal revenue books of those Chinese mercantile establishments that you inspected were kept?

A The figures are written in Spanish, that is, regular numbers, because the internal revenue books are already prepared with the dates, and they just fill in under the dates according to what they have sold during the day.

Q In what language are the words written?

A There are no words; they are all numbers.

Q In case of sales in amounts greater than fifty pesos, do you know whether the class of merchandise that is involved in this sale in an amount greater than fifty pesos is shown?

MR. GIBBS: I object to that on the ground that it is a matter of printed regulations, and the witness is not competent to testify to it.

A When a merchant makes a sale in an amount greater than fifty pesos, in the place headed "Remarks" in the internal revenue book they write the name of the buyer and the address of the buyer.

Q And the designation of the merchandise?

A I haven't seen any.

Q In what characters are the names and addresses of those purchasers in amounts greater than fifty pesos written?

A In Spanish; for instance, "Maria Santos, Calle David" —something like that.

Q Who prepares the internal revenue books which are kept by the Chinese merchants?

MR. GIBBS: I object to the question on the ground that no foundation has been laid for its admission.

A When they write their sales every day.

Q What is written down in the internal revenue book?

A Well, I can't tell who prepares it. When we reach their establishments, we see just what is written in their internal revenue books—they themselves.

Q Do you speak Chinese?

A No, sir.

Q Do you read Chinese?

A No, sir.

Q Do you write Chinese?

A No, sir.

Q During those inspections made by you in the Chinese mercantile establishments, have you found any discrepancies between what appears in that internal revenue book and the taxes paid by them?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence, the court having ordered the respondents to furnish evidence of this character to the petitioners in writing and they not having done so, and this being an effort on the part

of the respondents to introduce isolated portions of the information required by the court.

A Yes, sir.

Q To whom did you address yourself in those Chinese establishments when you found those discrepancies?

MR. GIBBS: I object to the question for the same reasons.

A To the manager.

Q A Chinese?

A Yes, the manager of the business, a Chinese.

Q In what language or dialect did you communicate with him?

A Sometimes in Tagalog, and sometimes in Spanish.

Q Did you understand each other?

A Yes, sir.

Q Do you know whether the Chinese merchants have a letter-press to make copies of invoices of sales which they make in their establishments?

A I don't know.

Q In which internal revenue district are you stationed?

A District No. 5, stationed in the City of Manila.

CROSS-EXAMINATION BY MR. GIBBS:

Q The Chinese merchants and Chinese employees who have been here a sufficient number of years know the local names of the articles they sell in their stores; is that true?

A It may be, but I don't know.

Q Their Chinese salesmen know enough to make sales to customers either by signs or words; is that true?

MR. FELIX: I object to the question on the ground that this witness has not been presented here as a customer of any of those tiendas, but as an internal revenue

agent. Nevertheless, we admit that the owners of the Chinese establishments and their employees know the names of the goods which they sell.

MR. GIBBS: I object to the fiscal's attempting to instruct the witness while I am cross-examining him.

MR. FELIX: This is a question propounded by the other side which we are willing to admit.

MR. GIBBS: We are not interested in what you admit or deny.

A I don't know; it is not my duty to know whether they do or not.

Q The American, English and Spanish merchants who keep regular books of account in English or Spanish —are they required to keep the Bureau of Internal Revenue book or not?

A I don't know whether they are required to or not, but they usually don't have that internal revenue book.

Q So that when you examine the books of Spanish-speaking or English-speaking merchants who keep a full set of books, you are obliged to examine their ledgers and day books in order to determine the amount of sales tax and internal revenue tax that they should pay; is that true?

A Not to determine it, but to find out whether they have declared all that they sold.

Q And the reason that you examine the ledger, cash book and day book of those merchants, instead of the internal revenue book, is that they don't keep any internal revenue book?

A They have no internal revenue book.

Q Have you also found discrepancies in the declaration of merchants of other nationalities besides the Chinese?

MR. FELIX: I object to the question on the ground that it is immaterial.

A Yes, sir.

Q And when there are discrepancies in the declarations of the Chinese merchants, you have no difficulty in discovering it, do you?

A Very much difficulty, because before we can discover the discrepancies, we must first have data from other merchants by questioning them only. We can't get anything from their books—we don't know their Chinese books.

Q How do you go about discovering the discrepancies that you refer to in the Chinese books?

A When I was examining the books of certain companies in a certain line of business, we found out that they are doing business as general merchants and at the same time as contractors, especially oil merchants. In selling oil, they are subject to a tax of 1½% on their sales, but at the same time those oil merchants, owners of oil mills, they receive copra from other merchants to be milled and they charge the merchants a certain amount of money for turning their copra into oil. According to the internal revenue law, they are subject as contractors in that case.

Q But what I am asking you now is, how you discovered it.

A Yes, sir, I found that from American merchants and sometimes Spanish merchants, and then there are also Chinese merchants who are owners of oil mills here in Manila. As I found that the foreign merchants made that mistake, the Chinese merchants might make also the mistake, so I went to their establishments and asked for their tax receipts, and

they showed me only the C-1 tax receipt— that is for the 1½%. I asked them where was the C-1 tax receipt—that is for general merchants—and by asking them questions, one that we compromised with for a certain amount told me that he had received so much copra to be milled and had received a certain amount of money for milling that copra. Then I told him that he was subject to the contractor's tax receipt, and to pay one per cent on the gross receipts. Then I reported that to our office, and he compromised the case.

Q Which Chinese merchant was that?

MR. FELIX: I object to the question, as that is privileged matter.

MR. GIBBS: We waive the privilege.

MR. FELIX: Our opponents have no right to waive the privilege, as that is the right of the private merchant himself, not of the other side, to waive that. The witness cannot answer that without incurring the penalties of the law.

MR. GIBBS: In view of the instructions of the fiscal to the witness not to answer the question, I shall not delay the proceedings by asking the court to require him to answer it.

MR. FELIX: The law is clear on the point, and it has already been decided upon by the Supreme Court.

Q You had previously discovered that merchants other than Chinese were not paying this particular tax; is that true?

MR. FELIX: I object to the question on the ground that it is immaterial.

A Yes.

Q And how did you ascertain that fact—how did you find it out?

A The foreign merchants?

Q Yes.

A By examining their books.

Q Now, all these omissions of the payment of this contractor's tax was due to error or ignorance on the part of merchants as to their liability for it, was it now?

A According to his statements, through ignorance of the law—according to his statements only.

Q And when you questioned the Chinese merchant about the milling of this copra, he admitted that he milled the copra, did he not, without any hesitancy?

A Without any hesitancy.

Q Where was the Chinese merchant's copra mill situated—here in Manila?

A Here in Manila.

Q And there was no difficulty in ascertaining that he was engaged in that business, was there, without looking at his books?

A If the merchants will tell the truth, all right, there will be no difficulty; since the merchant told me the truth there was no difficulty.

Q But don't the internal revenue inspectors inspect all the business that is carried on in the city?

A We are required to inspect all the business, but the question is, we can't inspect them all. We are not so many here in Manila, and sometimes it will take a week or two weeks to examine one firm.

Q Do you inspect as large a number of the books of the Chinese as you do of other merchants, in proportion?

A No, I inspect a larger number of the books of foreign merchants and Filipinos, very seldom of the Chinese. Only when I suspect that there is something wrong I will try to find out whether the Chinese is square or not.

Q Well, you inspect their internal revenue books all the time, don't you?

A But the question, if we have no data from other merchants as to their sales, what's the use of looking at their internal revenue books? There is no use.

Q Well, suppose a Filipino merchant omits from his sales book sales made by him, you are in the same position, are you not?

A He is also subject to payment for what he has done.

Q Yes, but if the Filipino merchant omits sales from the books of account kept by him, you are in just as bad a position with reference to discovering the omitted sales as you are when the Chinaman omits sales from his internal revenue sales book, are you not?

A Certainly, if we find out that the Filipino merchant has omitted something, we will collect what he has omitted, according to law.

Q But you have the same difficulty in ascertaining what he has omitted as you have in ascertaining what the Chinaman has omitted from the internal revenue sales book?

MR. FELIX: I object to the question in the form in which it is put. I request that Mr. Gibbs explain what sales he is referring to, whether sales on credit or for cash.

MR. GIBBS: I object to the constant instructions which the fiscal is giving to the witness.

MR. FELIX: If trying to avoid confusion for the witness may be classed as instructing the witness, I admit that I am instructing him.

MR. GIBBS: And in view of the instructions given, I withdraw the question.

Q You are of Chinese descent, are you?

A A Chinese mestizo.

Q And you never have taken any instructions in your father's language?

A No, sir.

Q How does the number of Chinese merchants in your particular district compare with the number of other merchants?

A We don't know; we don't study that.

There being no further questions, the witness was excused, and withdrew.

The hearing was then, at 4:30 o'clock p. m., continued until Thursday, January 3, 1924, at 2:30 o'clock p. m.

Thursday, January 3, 1924.

The hearing was continued at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Teodoro Reyes, a witness called on behalf of the respondents, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. FELIX:

Q State your name and personal circumstances.

A Teodoro Reyes, 48 years of age, married, chief of the accounting division of the Bureau of Internal Revenue, living at 639 Calle Evangelista, Manila.

Q Mr. Reyes, what are your duties as chief of the accounting division of the Bureau of Internal Revenue?

A Among various others, to receive all the accounts of the wholesale leaf tobacco dealers and the cigar and cigarette manufacturer, the accounts of distillers, and other things.

Q And do you receive the accounts of the wholesale leaf tobacco dealers?

A I receive copies of the registry books which they keep according to the requirements of our regulations.

Q Have you with you a sample of those forms to which you refer?

A Yes, I have one with me.

Q Please show it to us.

A (The witness indicating Exhibit 14.) This is from the official registry book, and it is the form of official registry of the wholesale leaf tobacco dealers.

Q Aside from this form, do the wholesale leaf tobacco dealers send in anything else?

A Yes, sir, the official guia. (The witness indicating Exhibit 15, with its stub.)

Q From whom do you receive these guias and these copies of transcript sheets, which forms have been marked as Exhibits 14 and 15?

A We receive them by mail from the dealers.

Q From Manila, or from some other jurisdiction?

A From Manila and from all the provinces of the Philippine Islands.

Q Among those wholesale leaf tobacco dealers, are there any Chinese?

A Yes, sir.

Q How many are there in the Philippine Islands?

A I desire to consult my records.

Q You may consult them.

A (The witness referring to a memorandum.) There are 325.

Q All of those wholesale leaf tobacco dealers in the Philippine Islands send those guias and those transcript sheets to which you have referred to the office of the Bureau of Internal Revenue, where you work?

A Yes, sir.

Q In what language do the Chinese wholesale leaf tobacco dealers make out those guias and those transcript sheets, as well as those registry books to which you have referred?

MR. GIBBS: I object to the question on the ground that it does not call for the best evidence.

A The books and transcript sheets are made out in English and the guias are made out in Spanish or English.

Q Have those Chinese wholesale tobacco dealers complied with the provisions of the internal revenue regulations with respect to the language in which they must make out those sheets which are marked as Exhibits 14 and 15?

MR. GIBBS: I object to the question on the ground that it is not intelligible, it not appearing to what regulations the question refers, and furthermore on the ground that it calls for a conclusion of the witness and not for a statement of facts.

MR. FELIX: We are referring to a fact which we are trying to establish by this witness, which is that the Chinese wholesale leaf tobacco dealers fill out the blank spaces in these forms in words in Spanish or English, as the case may be.

A Yes, sir.

Q Referring now not to the wholesale leaf tobacco dealears but to the cigar and cigarette manufacturers, do you know what books those manufacturers of cigars and cigarettes keep for purposes of taxation?

A Yes, sir, I have the forms here.

Q Please indicate them.

A (The witness indicating a book, one set of pages of which, composed of three sheets, is marked as Exhibit 16.) This book is a form of official registry book, and it is used only by manufacturers of finished tobacco, that is, chewing and smoking tobacco.

Q What other books do the tobacco manufacturers keep, if any?

A I have here other forms which are used by the manufacturers of cigars and cigarettes.

Q Where are those forms?

A They are here. (The witness indicating a book, a set of pages of which, composed of four sheets, is marked Exhibit 17.) This one (the witness indicating a book, one set of pages of which, composed of five sheets, is marked as Exhibit 18) is for the cigarette manufacturers. I also have forms of the books kept by the manufacturers mentioned, showing the raw material received in the factories.

Q Which class of manufacturers?

A Those three classes of manufacturers—of finished tobacco, of cigars, and of cigarettes, (the witness indicating a book, one set of pages of which, composed of seven sheets, is marked as Exhibit 19). I also have a form of official invoice (the witness indicating a book, one sheet of which is marked as Exhibit 20).

Q Now, then, do the Chinese dealers in wholesale leaf tobacco, the manufacturers of finished tobacco—that is, smoking and chewing tobacco—and the manufacturers of cigars and cigarettes use those forms which are marked for identification as Exhibits 16 to 20, inclusive?

A They fill in the blank spaces on those forms either in Spanish or English.

MR. GIBBS: I move to strike out the answer of the witness on the ground that it is not responsive to the question, and on the further ground that the answer is not the best evidence.

Q Since when have the Chinese merchants who are wholesale dealers in leaf tobacco as well as the manufacturers of finished tobacco and manufacturers of cigars and cigarettes used those forms, filling in the blank spaces in words and figures in English or Spanish?

A I understand that they do so from the moment they begin business.

Q Do you know for how long they have been following that practice?

A Since the establishment of the Bureau of Internal Revenue, as I understand it.

Q When was that?

A If I remember correctly, it was in 1905.

Q How many Chinese tobacco manufacturers are there in the Philippine Islands?

A I must consult my records again. (The witness referring again to a memorandum.) The number of Chinese manufacturers of finished tobacco in the whole

Islands is 16, of cigar manufacturers 9, and of cigarette manufacturers 15.

Q Referring now to the distillers, do you receive any report from the distillers in the office where you work?

A Yes, sir.

Q What statements or reports do you receive?

A I receive copies of the transcript sheets monthly from the distillers, whether Chinese, Filipino or foreign, from all over the Islands.

Q Please indicate which transcript sheets those are?

A There are several of them.

Q Please indicate them.

A (The witness indicating a sheet which is marked Exhibit 21.) This form is received from the distillers whose operations consist solely of the distillation of alcohol.

Q From where are the data obtained which the alcohol distillers write in the blank spaces of this form Exhibit 21?

A They are taken from the official registry book.

Q Is that identical with this sheet, Exhibit 21?

A Yes, sir, it is identical.

Q What other reports do you receive?

A (The witness indicating a sheet which is marked as Exhibit 22.) From those distillers who both distil and rectify we receive monthly four copies of these. One of them refers to crude alcohol.

Q From where are the data obtained which are written in this form, Exhibit 22, before it is sent in to the Bureau of Internal Revenue?

A They are taken from the official registry book which they have and which is exactly the same as this sheet,

Exhibit 22. This other sheet (the witness indicating a sheet which is marked as Exhibit 23) refers to rectified spirits.

Q From where are the data taken which the merchants fill in on this Exhibit 23 before sending it in to the Bureau of Internal Revenue?

A They are taken from the official registry book which is exactly the same as this sheet. This other sheet (the witness indicating a sheet which is marked as Exhibit 24) is the registry of compound liquors.

Q Where do the merchants who use this form obtain the data with which they fill in the blank spaces on this Exhibit 24 before sending it in to the Bureau of Internal Revenue?

A They are taken from the official registry book which is exatcly the same as Exhibit 24. This other sheet (the witness indicating a sheet which is marked as Exhibit 25) is the account of the sales made by all the different manufacturers of alcohol referred to.

Q From where do the merchants who use this form, Exhibit 25, obtain the data to fill in the blank spaces on it before sending it in to the Bureau of Internal Revenue?

A They are taken from the official registry book, which is exatcly the same as the sheet, Exhibit 25.

MR. FELIX: We have no objection to showing in the record that the books referred to by the witness as the books from which the different form sheets have been taken were furnished by the office of the Bureau of Internal Revenue.

A (The witness continuing his answer.) I also have here a book of official tax receipts. When the goods are

taken out from the distillery, the lines are filled in and the sales of these goods upon which tax is to be assessed are filled in this blank space on the right hand side. This book itself is received in the office of the Bureau of Internal Revenue as soon as all the pages are filled. (One page of the book referred to was marked as Exhibit 26.) I also have a sheet on which are entered the transactions of manufacturers of imitation wines and liquors (the witness producing a sheet which is marked as Exhibit 27).

Q From where are the data obtained which the merchants enter in the blank spaces on this form, Exhibit 27, before sending it in ot the Bureau of Internal Revenue?

A They are taken from the official registry book which we furnish to the merchants, the pages of which are the same as this sheet, Exhibit 27. I also have here a form of official invoice which is used by those mannufacturers of imitation wines and liquors (the witness producing a sheet taken from a book, which sheet is marked as Exhibit 28).

Q Do you know whether there are any Chinese merchants engaged in the business of distilling alcohol, rectifying alcohol, distilling crude alcohol, and manufacturing liquors, as well as imitation wines and liquors?

A Yes, sir.

Q How many?

A (The witness referring to a memorandum.) According to my records, there are 26 in the whole Islands.

Q Do those Chinese merchants engaged in those businesses use these forms which for identification have been marked Exhibits 21 to 28 inclusive?

A Yes, sir.

Q In what language or dialect do those Chinese merchants engaged in these classes of business fill in those forms marked as Exhibits 21 to 28, inclusive?

MR. GIBBS: I object to the question on the ground that it is incompetent and does not call for the best evidence.

A In Spanish or English.

Q For how long have those merchants who use these forms, Exhibits 21 to 28, inclusive, been following this practice of sending in these forms with the blank spaces filled in words and figures in Spanish or English?

A I understand that it has been since the establishment of the Bureau of Internal Revenue, ever since 1905, approximately.

Q How many distilleries under the ownership or management of Chinese are there in the Philippine Islands?

A I believe I have answered that—there are 26.

CROSS-EXAMINATION BY MR. GIBBS:

Q How many years have you been employed by the Bureau of Internal Revenue?

A Since the office of the Bureau of Internal Revenue was moved from the Oriente Building to Calle Anloague, which is now Calle Juan Luna, which I believe was in 1905; but in 1907, in the month of April, I presented my resignation, and I went to work there again in August of the same year.

Q Who had been the collectors of Internal Revenue since the establishment of the Bureau here, or since your knowledge of this bureau?

A I don't know whether I can name them in order, but more or less I can give their names: first came Mr.

Hord, then Mr. Cromwell, Mr. Nolting, Mr. Rafferty, and Mr. Trinidad. I believe Mr. Steele was acting collector for a while.

Q In addition to these forms which you have identified as Exhibits 14 to 28, inclusive, what other reports in writing has the Bureau of Internal Revenue required from the merchants and manufacturers in general? I refer especially to reports of purchases and sales and to income tax returns.

MR. FELIX: I object to the question on the ground that the witness did not testify on direct examination as to anything outside of reports and returns filed by a few classes of Chinese merchants.

A So far as concerns sales, we receive the stubs which are attached to the licenses. With respect to the income tax, I am not able to testify, because those forms are received in the income tax division.

Q What I want to find out from you is whether, as a matter of fact, in addition to these forms, Exhibits 14 to 28, inclusive, it is not true that there are other reports required by the Bureau of Internal Revenue outside of those upon sales which are entered in the internal revenue books, and the purchases, which are also entered in the forms, and the income tax returns?

MR. FELIX: I object to the question on the ground that no foundation has been laid for it, unless it refers to the reports of sales and the returns of the classes of merchants as to whom the witness has testified in his direct examination.

MR. GIBBS: This is a very intelligent witness, and he is in charge of internal revenue affairs in general.

MR. FELIX: No, sir. He is employed in only one division.

A So far as concerns my division—I can't state whether the Bureau requires other declarations, because if they are required, those declarations do not come to my division.

Q But, Mr. Reyes, you, as an employee and an intelligent citizen, have knowledge, without reference to your employment, of the forms which are required from the merchants and manufacturers; isn't that true?

MR. FELIX: I object to the question on the ground that the witness is not competent to testify as to what takes place in other divisions of his office—an office so complex as that of the Bureau of Internal Revenue —and furthermore because it does not call for the best evidence.

A Each one of us in our office has his own division, and we do not take any interest in learning the work of the other divisions. We confine ourselves to trying to know everything that is connected with our own divisions.

Q Let's put the question in another form: you know that in addition to the forms, Exhibits 14 to 28, inclusive, the Bureau of Internal Revenue also requires that the merchants and manufacturers fill out the internal revenue book in which are entered all their purchases and sales; isn't that so?

MR. FELIX: I object to the question on the same grounds as those stated in my previous objection.

A As to that requirement of the office, if it does exist, inasmuch as it does not pertain to my division, I have not taken sufficient interest to find out about it.

Q So that you mean to state to the court that you have

no knowledge of the existence of internal revenue sales books which the merchants must fill out?

A I have already stated that inasmuch as it does not pertain to my division, if that requirement does exist I have had no interest in finding out about it. I don't mean to say, however, that I know nothing about the sales book, because from time to time I see merchants carrying a book in which the sales are entered.

Q Then you have a knowledge of this form?

A A superficial knowledge.

Q And you also have knowledge of the fact that all merchants are required to file an income tax return; isn't that so?

MR. FELIX: The law is the best evidence, and that is a question of law, and I therefore object on that ground. Those who must file income tax returns are stated in the law.

A From what I saw during the periods for filing income tax returns, many of them come to our office to file them.

Q And according to your best knowledge, those sales books and purchase books and income tax returns are made out in English or Spanish, as all those forms, Exhibits 14 to 28, are made?

MR. FELIX: I object to the question on the ground that it is outside the field of the direct examination. This witness is not the one who is most competent to testify on that point.

A I don't know positively, but from what I hear I believe they are made out in English or Spanish.

Q And so far as you know, these various forms which you

have identified, the forms for sales, the forms for purchases, and the income tax returns are all the reports which the Bureau of Internal Revenue has required from the merchants, whether they are Chinese merchants or merchants of any nationality, since the establishment of the Bureau of Internal Revenue?

MR. FELIX: I object to the question on two grounds: first, because the testimony of this witness would not be the best evidence, and second, because it is already answered. I refer to reports outside of those as to which the witness has already testified.

MR. GIBBS: I protest against the effort of the fiscal to mislead his own witness.

MR. FELIX: I protest against the unjustified protest of counsel for opponents.

A I don't know all the requirements of the office. Those which refer to my division I know perfectly.

Q And if all those forms are correctly filled out, there is no necessity for any more reports as a basis for the assessment of taxes?

MR. FELIX: I object to the question in so far as it refers to other taxes which do not fall within the work of the division which is in charge of this witness, because his testimony would not be the best evidence.

A That kind of work falls to the agent's division, and not to our division.

Q Well, let us confine ourselves, then, to these forms, Exhibits 14 to 28: if the dealers and manufacturers, whether they be Chinese or whether they be of any other nationality, correctly and faithfully fill out all

these forms, then you have all the information necessary for the due assessment of taxes; isn't that so?

A So far as concerns the manufacturers, yes, sir.

Q And the merchants?

A No, sir, we do not have the necessary data, because the merchants, at least the dealers in leaf tobacco, set forth in these transcript sheets the amount of tobacco purchased, the persons from whom it has been purchased, the number of bales and the weight of each bale. Now, when they are sold, they set forth the person to whom they are sold, the number of bales and the weight of each bale. They do not put down the value of the goods.

Q Is this due to failure to fill out the forms, or to the failure of the Bureau to prepare its forms properly?

MR. FELIX: I object to the question on the ground that it is based upon a false assumption, which is that it is due to failure on the part of the Bureau of Internal Revenue to prepare its forms properly.

A The reason is that in the form there is no column in which to show the value of the goods.

Q So that all that is lacking in order to make them furnish all the necessary data for purposes of taxation is to add another column in the form?

A That is true, so far as concerns the dealers in leaf tobacco, because those dealers, under the administrative tariff under which they operate and carry on their business, do not pay the internal revenue tax, as it is under another tariff.

Q Well, with the exception of the omission in some of these forms of a column which should be there, you obtain all the information necessary for purposes of

taxation by means of those forms already identified by you; is that so?

A As I have stated to you, the wholesale dealers in leaf tobacco do not pay the tax under that tariff under which they operate, but under another tariff, so that in our division we don't need to know about the other tax which those wholesale leaf tobacco dealers should pay.

Q But confining yourself now to the reports which come under your supervision, I want to know if the information which you obtain by means of the forms already identified are sufficient for purposes of taxation?

A So far as refers to these businesses, the merchants who use those forms, with the exception of the wholesale leaf tobacco dealers, we have sufficient data for—

Q And any omission in the reports filed by the wholesale leaf tobacco dealers themselves is due to the omission of a column which should be included in the form?

MR. FELIX: I object to the question on the ground that the witness has already answered it.

A No, sir, because we don't need to know what tax those merchants should pay, because under the tariff under which they operate, a copy of the registry book of which passes through our division, it is not necessary for us to know the tax which they should pay.

Q Then, there is no lack whatever of information, so far as your division is concerned?

A With respect to the division of accounts?

Q So far as refers to the division under your supervision.

A No, sir, I refer to those merchants and manufacturers who use those forms.

Q What I want, Mr. Reyes, is to know whether, by means of those forms, Exhibits 14 to 28, inclusive, you obtain all the information which is required by your division.

A Yes, sir.

Q And during your entire employment in the Bureau of Internal Revenue, Mr. Reyes, you haven't learned of any other information required by the Collector or by any division of the Bureau of Internal Revenue from any merchants or manufacturers which is not furnished by them?

A You refer to the accounting law?

Q I refer to the regulations issued by the Bureau of Internal Revenue since its beginning with reference to information required from merchants and manufacturers for the purposes of the collection of taxes.

MR. FELIX: I object to the question on the ground that the witness is not competent to answer it and that his testimony would not be the best proof as to what is done in other divisions of th Bureau of Internal Revenue outside of his own.

A I understand that there are certain ciculars issued by the Bureau of Internal Revenue requiring merchants to keep books of purchases and sales, but I don't know what results have been obtained from those circulars.

Q Now, assuming that the books of purchases and sales required by the Bureau of Internal Revenue have been filled out in English or Spanish by the merchants, do you know of any other demand for information made by the Bureau of Internal Revenue

that has not been complied with, whether by the Chinese or by any other nationality?

MR. FELIX: I object to the question on the same grounds stated in my objection to the former question.

A I don't know.

Q And after those forms, Exhibits 14 to 28, are filled out, the Bureau of Internal Revenue receives them by mail, as I understand from your former answer?

A Yes, sir, they are generally received by mail, but there are some exceptions; some of them bring them there personally—those who are in Manila.

Q That is, by mail or by messenger?

A Yes, sir.

Q And the forms are not filled out in your presence?

A No, sir.

Q Nor do you know whether they have been filled out by the merchants themselves, or by their employees, or by some agent called in for the purpose?

A No, sir, I don't know.

REDIRECT EXAMINATION BY MR. FELIX:

Q These forms which you have identified, marked as Exhibits 14 to 28, inclusive, are received by you in the ordinary course of business in your office?

A Yes, sir.

MR. GIBBS: declined to recross-examine the witness.

There being no further questions, the witness was excused, and withdrew.

MR. FELIX: I offer in evidence Exhibit D, duly identified by the petitioners.

MR. GIBBS: I object to Exhibit D for the reason that it contains but a part of the information which was re-

quested by the petitioners, and for that reason it is incompetent.

MR. FELIX: I desire to call attention to the fact that Exhibit D is itself the best refutation of the statement of counsel for opponents, inasmuch as it does not refer solely to the sales tax and the income tax. I offer in evidence Exhibit 2 of the respondents.

MR. GIBBS: Exhibit 2 is objected to on the ground that it is incomplete and manifestly consist of a selection of the information which the respondents consider beneficial to their interests.

MR. FELIX: Exhibit 2 is offered as a part of the testimony of Mr. Posadas, in which are explained the circumstances under which this Exhibit 2 has been prepared. I offer in evidence Exhibit 3 of the respondents in connection with the testimony of Mr. Trinidad.

MR. GIBBS: Exhibit 3 is objected to on the ground that it is not a proper subject of an official certificate and is a manifest attempt to foist upon the court a statement in this form of a certificate without subjecting the signer of the certificate to cross-examination upon the contents thereof.

MR. FELIX: I desire to call attention to the fact that both Mr. Posadas, who signed that certificate, and Mr. Wenceslao Trinidad, who is the person who signed the indorsement to which Exhibit 3 refers, have testified here as witnesses, and both their testimony and their indorsements specifically refute certain allegations of the complaint.

MR. GIBBS: In connection with and as a part of our objection, we call attention to the fact that this so called certificate was not offered in evidence until after the

witnesses testified, and we were therefore deprived of the privilege of cross-examining them as to its contents, and furthermore the so-called certificate is secondary and incompetent evidence and is a self-serving declaration.

MR. FELIX: I desire to call the attention of the court to the fact that although this Exhibit 3 is only now presented in evidence, it was identified by the witness, Mr. Wenceslao Trinidad, in the course of his testimony. I offer in evidence Exhibit 4 of the respondents in connection with the testimony of Messrs. Wenceslao Trinidad and Eulogio P. Revila, city fiscal.

MR. GIBBS: We object to Exhibit 4 for the reason that it is a self-serving declaration and is not binding upon the petitioners.

MR. FELIX: I offer in evidence Exhibit 5 in connection with the testimony of Messrs. Juan Posadas and the respondent Eulogio P. Revilla, city fiscal.

MR. GIBBS: That is objected to for the same reason as Exhibit 4.

MR. FELIX: I offer in evidence the documents marked as Exhibits 6-a, 6-b, 6-c, 6-d and 6-e, in connection with the testimony of Benito Leuterio.

MR. GIBBS: I object to all portions of Exhibits 6-a to 6-e, inclusive, except those which refer to bookkeeping, on the ground that they are immaterial.

MR. FELIX: I offer in evidence Exhibits 7-a, 7-b and 7-c, in connection with the testimony of Mr. Amado del Rosario.

MR. GIBBS: Those exhibits are objected to, except in so far as they refer to the few persons mentioned therein as having passed examinations as bookkeepers, on

the ground that the remainder of the persons designated therein were not examined for bookkeeping and the mention of them in the exhibits is wholly immaterial and misleading.

MR. FELIX: I offer in evidence Exhibit 8 in connection with the testimony of Mr. H. A. Bordner, the city superintendent of schools.

MR. GIBBS: Exhibit 8 is objected to on the ground that the matter contained therein is not the proper subject of a certificate and that it is a self-serving, incompetent statement, and furthermore because it shows on its face that the graduates mentioned therein are not graduates in bookkeeping.

MR. FELIX: I offer in evidence Exhibits 9-a, 9-b, 9-c, 9-d, 9-e, 9-f, 9-g, 9-h, 9-i, 9-j and 9-k, in connection with the testimony of the witness, Vicente Fabella, on cross-examination.

MR. GIBBS: Those are objected to on the ground that not only the exhibits, but the statements, if any, of the witness made with reference thereto are wholly immaterial.

MR. FELIX: I wish to make it appear that respondents have no great interest in the introduction of these letters in evidence and that it only offers them in order that the testimony of the witness Vicente Fabella may be clear, inasmuch as this witness for the respondents was fully and exhaustively cross-examined as to these letters by the attorneys for petitioners. I also desire to state that these letters were brought here at the special request of petitioners.

MR. GIBBS: Exhibit 9-k is particualrly objected to because it is a wholly immaterial and unnecessary encum-

brance of the record, the inclusion of which would cost several hundred dollars for printing as part of the record on appeal to the Supreme Court of the United States.

MR. FELIX: I repeat here what I have already expressed in my former statement, that I have no interest in offering this Exhibit 9-k, and I only do so in order that the testimony of Mr. Fabella may be complete. These pamphlets, Exhibit 9-k, as well as these letters, Exhibits 9-a to 9-j, inclusive, were asked for by the attorneys for petitioners.

MR. GIBBS: The record will disclose what took place at the time of the production of the documents referred to.

MR. FELIX: I offer in evidence Exhibit 10.

MR. GIBBS: I have no objection to that.

MR. FELIX: I offer in evidence Exhibit 11 in connection with the testimony of the witness Alfredo Leon Yatco.

MR. GIBBS: I object to Exhibit 11 on the ground that it is wholly immaterial and in no manner tends to establish the truth of its contents, and that it is a self-serving incompetent, declaration.

MR. FELIX: I desire to call the attention of the Honorable Supreme Court to the fact that the Co Liam referred to is one of the petitioners in this case, and, if I remember correctly he also testified with respect to this Exhibit 11. I offer in evidence Exhibit 12, calling particular attention to page 9 of the pamphlet which forms a part of the said exhibit.

MR. GIBBS: That is objected to as a wholly immaterial and unnecessary encumbrance of the record which will expose the appellant to heavy expenditures for the printing of the bill of exceptions on appeal to the

Supreme Court of the United States. It is further objected to on the ground that it is incompetent, is not the best evidence, and is not identified according to the proper method of proving a foreign law.

MR. FELIX: I desire to call the attention of the Honorable Supreme Court to the fact that this Exhibit 12 is offered to refute a specific allegation of the complaint filed. In answer to the last statement of opponents, I desire to call the attention of the Honorable Supreme Court to the first and second pages of the pamphlet. This Exhibit 12 is furthermore presented in connection with the testimony of the witness Alfredo Leon Yatco. I offer in evidence this document marked Exhibit 12-a composed of eight pages and one certificate.

MR. GIBBS: Exhibit 12-a is objected to on the ground that it is incompetent and immaterial, not properly identified according to the proper method of proving a foreign law, and for the reason that the alleged excerpts of the various laws quoted are incomplete and fail to disclose all of the laws upon the subjects therein mentioned.

MR. FELIX: I desire to call the attention of the court to the fact that Exhibit 12-a is offered in this form in order to avoid offering in evidence the volumes mentioned in this certificate, and to the fact that, as appears therein, these volumes are on file in the Philippine Library and Museum. I offer in evidence this document marked as Exhibit 12-b.

MR. GIBBS: That is objected to for the same reasons stated in our objection to the last exhibit.

MR. FELIX: I offer in evidence Exhibit 12-c.

MR. GIBBS: That is objected to for the same reasons.

MR. FELIX: I offer in evidence Exhibit 12-d, calling attention to the fact that the volumes mentioned in this Exhibit 12-d are on file of the library of the Supreme Court.

MR. GIBBS: That is objected to for the same reasons.

MR. FELIX: I offer in evidence Exhibit 12-e.

MR. GIBBS: I object to that on the same grounds; and with reference to all of the certificates as to these foreign laws, we further object on the ground that the countries where these laws are alleged to exist are for most part hot-beds of revolution, and the fact that they have such laws is one of the strongest arguments against such a law in this country.

MR. FELIX: The objection on the last ground stated is wholly unjustified, and attorney for the petitioners cannot prove the truth of his statement. I offer in evidence Exhibit 13-a to 13-kk, inclusive, in connection with the testimony of Mr. Riepe.

MR. GIBBS: Those are objected to as immaterial and incompetent, and particularly because they are not properly identified, and due to the manner of their presentation, respondents are deprived of any means of demonstrating their falsity.

MR. FELIX: The exhibits themselves constitute the best evidence in refutation of the statement of petitioners. I offer in evidence Exhibits 14 to 28, inclusive.

MR. GIBBS: We have no objection to Exhibits 14 to 28, inclusive.

The hearing then, at 5:00 o'clock, p. m., was continued until Friday, January 4, 1924, at 2: 30 o'clock, p. m.

Friday, January 4, 1924.

The hearing was continued at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

MR. FELIX: I offer in evidence Exhibit 29, composed of five pages, consisting of certified copies of proposed Act No. 658 of the House of Representatives of the Philippine Islands, as well as the explanatory note and the record of the various stages through which th said proposed law passed until it was finally converted into Act No. 2972, known as the Accounting Law. This Exhibit is offered in order to complete Exhibit K of the petitioners.

MR. GIBBS: No objection.

MR. FELIX: I offer in evidence Exhibit 30, composed of four pages, which is a certified copy of Report No. 30 of the Committee on Revision of Laws of the House of Representatives of the Philippine Islands upon Proposed Acts Nos. 453 and 513 of the same House, which are also attached, and which were laid on the table. This exhbit is offerred in order to show that the Philippine Legislature is not willing to amend the Accounting Law.

MR. GIBBS: No objection.

MR. FELIX: I offer in evidence Exhibit 31, composed of eleven pages. This exhibit is a certified copy of a report of the Chairman of the Committee on Revision of Laws of the House of Representatives of the Philippine Islands, directed to the Speaker of the said House. This exhibit is offered in connection with Exhibit 30, to show the motives which actuated the said Committee in not recommending the amendment of the Accounting Law.

MR. GIBBS: I object to Exhibit 31 first, because it is not a record which is required to be kept by the Philippine Legislature and is therefore not the subject of an official certificate as to its contents; that is is a mere self-serving document, the contents of which are nothing more nor less than an argument prepared on behalf of the respondents, which is wholly immaterial and incompetent as evidence in this case; and, second, that the statements made by the author of the document would not have been admissible had he been placed on the witness stand to testify thereto, and are much less admissible in the form in which they are presented, which deprives counsel for petitioners of the opportunity to cross-examine the author of the document, as well as the persons whom he pretends to quote; the document, both as to the statements made by its author and as to those which he pretends to quote, being the most objectionable form of hearsay evidence.

MR. FELIX: In reply to the grounds upon which the objection of counsel for petitioners is based, I desire to state that our opponents have no right to offer such an objection after having offered as exhibits various letters and opinions of different persons which are in any sense admissible, and much less to impugn the motives of the Philippine Legislature, which passed Act No. 2972. We do not think that the petitioners believe that they have the right to offer in evidence exhibits such as those marked "M", "N", "O", and "P", and to deny that right to us, especially with reference to an official document such as Exhibit 31. Furthermore, as I have already

stated, this Exhibit 31 is offered in connection with Exhibit 30. I offer in evidence Exhibit 32, composed of thirty-five pages. This exhibit is a certified copy of pages 2, 6 to 14, 16 to 18, 20 to 24, and 30 to 34 of the of the daily record of sessions of the House of Representatives of the Philippine Islands, corresponding to November 12, 1921, when there was discussed in the said House not the Accounting Law, Act No. 2972, but a proposed amendment which failed of passage. The petitioners have offered in evidence Exhibit L, which is only a portion of the speeches made in the House of Representatives of the Philippine Islands on the said 12th day of November, 1921, and in order to supply that part of the said speeches which is lacking, this Exhibit 32 is offered.

MR. GIBBS: No objection.

MR. FELIX: I also have here the record of this Supreme Court in Case No. R. G. 16671, entitled, "Lim Chai Seng vs. Wenceslao Trinidad." In order not to offer this record in evidence, I submit the bill of exceptions and the decision of the Supreme Court of the Philippine Islands handed down in said case which bill of exceptions and copy of decision I have obtained from the Clerk of this Court, and which are marked for identification as Exhibits 33-a and 33-b. These exexhibits are offered for the purpose of attacking the veracity of the witness for petitioners known as Lim Chai Seng, the plaintiff in that case, who testified in this hearing that the employees of the Bureau of Internal Revenue stole from him some stamps which had been placed on his license, and from the allegations contained in his own complaint, it is clear

that he did not tell the truth when he gave that testimony.

MR. GIBBS: Counsel for the petitioners, in view of the fact that they have not the testimony of Lim Chai Seng before them, are unable to say whether the statement of counsel for the respondents with reference to such testimony is correct or not, but nevertheless we object to the introduction of the record marked as Exhibits 33-a and 33-b for the reason the attention of the witness Lim Chai Seng was not called to the record mentioned at the time he testified here, and for the further reason that the said record is wholly immaterial and would constitute an unnecessary encumbrance of the record of these proceedings.

MR. FELIX: I desire to call the attention of the court to the fact that the witness Lim Chai Seng testified in this hearing as to the subject matter of his complaint filed in Case No. R. G. 16671 of this Supreme Court. These are all my exhibits, and I rest my case.

MR. GIBBS: I desire to recall Mr. Posadas for further.

MR. FELIX: I object to the presentation of this witness as a witness for the respondents after we have closed our case. We have no objection to petitioners' calling this witness as their own witness on rebuttal.

MR. GIBBS: I desire that the Commissioner enter in the record that this witness was called pursuant to a request filed by us yesterday upon the close of the session, for the purpose of further cross-examination by counsel for petitioners, and that such request was made in the presence of counsel for respondents, and that the witness has been present throughout the session, awaiting the termination of the presentation

of the documentary evidence, with full knowledge and notice on the part of both the witness and Mr. Felix that he was to be called for further cross-examination upon the termination of the presentation of said documentary proofs.

COMMISSIONER: That is true; it will be entered in the record.

MR. FELIX: I object to the witness' testifying until the court decides whether Mr. Posadas is to testify on cross-examination or for the petitioners in rebuttal; and in answer to the last statement of Mr. Gibbs, and to clear up the fact, I will state that I do not deny that he asked yesterday that Mr. Posadas be called, although the first notice that I had of such calling was when Mr. Aurelio Torres, Assistant Clerk of this court, who was the one who officiated at the previous session, communicated it to me by telephone this morning. Mr. Posadas came here about 2:30 this afternoon because he was cited to appear at that hour, and although it is true that Mr. Gibbs told me that he was going to call him for further cross-examination, I also stated at that time that I strongly objected to his being called for cross-examination, but that I did not object at all to his being called as their witness in rebuttal.

Juan Posadas, Jr., then resumed the stand as a witness and testified as follows:

CROSS-EXAMINATION BY MR. GIBBS (continued):

Q I call your attention to these circular letters or regulations, marked as Exhibits R, S, and T, Exhibits R an S of which appear to have been issued by James J. Rafferty, as Collector of Internal Revenue, and Ex-

hibit T of which appears to have been issued by Alberto Barretto, a secretary of Finance, and ask you to state if you recognize those regulations as regulations which were issued by the officials by whom they purport to have been issued.

A Yes, sir, because they are a matter of record in my office.

Q Which of these regulations are now in force?

A *Regulations No. 34, Exhibit T.*

Q You have seen the forms which have been offered in evidence as Exhibits 14 to 28, inclusive, by the respondents, have you not?

A No, sir, I was not present when they were offered in evidence.

Q (Handing to the witness the Exhibits referred to) I call your attention to Exhibits 14 to 28, inclusive, and ask if you are familiar with those forms.

A Yes, sir, they are official forms of the Bureau of Internal Revenue.

Q Am I corrcet, Mr. Posadas, in my recollection that you testified that the Internal Revenue sales books were being kept by all of the Chinese merchants in English, Spanish or Tagalog—or, in other words, that the spaces were being filled with Arabic characters?

MR. FELIX: Does the question refer to sales books in general?

MR. GIBBS: To the sales books of the Internal Revenue Bureau.

MR. FELIX: There are several sales books.

A The great majority of the Chinese merchants keep them in that form.

Q And also that the records of purchases are likewise filled out, as required by regulation No. 34, in Arabic

numbers, or, in other words, in English, Spanish, or some local dialect?

A No, sir, I haven't had an opportunity up to now to inspect the purchase books of the Chinese merchants so as to determine in what language they are kept, but it is true that when these regulations were put into force, through a misinterpretation they believed that they had to keep them in English, Spanish or some local dialect, and the office found it necessary to send out an explanation to all Internal Revenue Agents, instructing them that so long as the question of the constitutionality of the Accounting Law was pending, the merchants could keep them in any language.

Q This record of purchases required by regulation No. 34, Exhibit T, would be as simple in form, or is as simple in form, as the simple invoices of sales which some of the witnesses for the respondents have been testifying here are kept by the Chinese merchants as evidence of sales made by them to their customers, would it not?

A I believe that the similarity can best be judged by referring to the form which is set forth in the regulation.

Q But it is a very simple record, is it not?

A In my opinion it is.

Q And any Chinese, or any employee of the Chinese merchant, who could make an invoice of sales to his customers, could easily fill out the blank spaces in this form for the record of purchases required by regulation No. 34?

MR. FELIX: I object to the question on the ground that it is immaterial, and for the further reason that it

ask for a conclusion of the witness as to the effect of what appears in this regulation

A I wouldn't believe that there would be any difficulty.

Q As I understand it, Mr. Posadas, income tax returns are made by merchants and manufacturer of all nationalities in English and Spanish, are they?

A Yes, sir, by all individuals subject to income tax.

Q And the records and information required by this regulation No. 34, Exhibit T, and by the regulations requiring income tax returns and the records examples of which are evidenced by Exhibits 14 to 28, inclusive, are all the records, and information which are required by any regulation of the Bureau of Internal Revenue for purposes of taxation.

A No, sir, there are some more which refer to other taxes.

MR. FELIX: It appears that this is a question of law which appears in the Administrative Code and in the laws amending this code, and therefore, it is not a proper subject of evidence. I therefore object to the question.

Q Are these additional records and information obtained by means of forms similar to those marked as Exhibits 14 to 28, inclusive?

A They differ only in form, according to the taxes to which the forms refer.

Q Why were they not presented here to complete the records that are required of merchants and dealers and manufacturers, and especially those of the Chinese nationality?

MR. FELIX: I object to the question: it is not up to this witness to testify as to why they were not presented.

A I don't know the reason why all the other forms were not presented, but a superficial examination of the

forms which I have in my hand, Exhibits 14 to 28, inclusive, including the records required by regulation No. 24, indicates that they are almost complete so far as they refer to the specific taxes and merchants' taxes to which merchants and manufacturers are subject.

Q And with the declarations for income tax, the requirements of Chinese merchants and manufacturers for the purpose of collecting taxes are complete?

A No, sir.

Q What are the additional requirements?

A If I remember correctly, there are lacking here the quarterly coupons or certificates which the merchants, without distinction as to nationality, are obliged to fill out and file for the payment of the merchants' tax.

Q And that coupon is a form which has to be filled out in English or Spanish in a similar manner as the Internal Revenue book?

A Almost the same.

Q In other words, nothing is needed except to fill in the blanks—

A To fill in the blank spaces provided for the date, the total amount of sales, the taxes due, and the signature of the taxpayer.

Q Is there any other record which is required by the Bureau of Internal Revenue of the Chinese merchants or manufacturers for the purposes of the due assessment of taxes?

A I don't remember any others at this moment, outside of those mentioned.

Q And since what date have you been employed in the

central office of the Bureau of Internal Revenue, Mr. Posadas?

A I think I have stated since March, 1920

The hearing was then, at 5:00 p. m., continued until Tuesday, January 8, 1924, at 2:30 o'clock p. m.

Tuesday, January 8, 1924.

The hearing was continued at 2:30 o'clock p. m., the commissioner, the attorneys for both parties, and the reporters being present.

Juan Posadas, Jr., the witness on the stand at the time of adjournment of the previous session, resumed the stand as a witness, and testified as follows:

CROSS-EXAMINATION BY MR. GIBBS:

Q Mr. Posadas, on reading over your testimony given at the last hearing, it does not seem entirely clear upon the point of whether or not there is any record or information required by the Bureau of Internal Revenue from Chinese or other aliens engaged in business for profit in the Philippine Islands other than that required by Regulation No. 34, Exhibit T, the merchants coupons already described by you, the declarations for income tax, and the filling out of those forms represented by Exhibits 14 to 28, inclusive, of the respondents. Will you please state whether there is any other record or information required of these people by your office?

A Yes, sir, the declarations which we require from those engaged in the insurance, from banks, holders of franchises, and the auxiliary invoices of forestry products, and others which I do not remember at this time.

Q Are there any Chinese or other aliens engaged in these

enterprises that you last mentioned who do not keep regular books of account, Spanish, or some local dialect?

A I haven't had an opportunity to inspect personally the books of those enterprises which you have mentioned, and I can't say in what language they keep their books, although I believe they are prabably kept in Spanish or English.

Q And all the records and information required of those last-mentioned enterprises are furnished in English or Spanish?

A Yes, sir, the office furnished them with printed forms.

Q Do the few Japanese, Hindoos, and other alien merchants, if any, who do not keep books of account in English or Spanish, also keep the Internal Revenue sales book required by you?

MR. FELIX: The word "few" is relative. Of course, we believe, that the foreign merchants outside of the Chinese are few as compared with the Filipinos and the Chinese, but that does not mean—at least, it does not appear in the record—that the foreign merchants are few in number.

MR. GIBBS: I wish to renew my protest against the constant instructions of the Fiscal to the witness which have no relation whatever to any legitimate objection.

MR. FELIX: For my part, I wish to state that in my opinion these continued protests have no other purpose than to influence the minds of this Supreme Court, but the objections themselves and the very terms in which the objections are stated can be considered by this Honorable Supreme Court, which can then decide, with knowledge of the case, whether or not they constitute instructions to the witness. On the

other hand, the witness is of too high a social standing for him to remain silent or to conceal the truth at the instruction of anybody.

A I don't know, in view of the fact that I have not made any personal investigation of the kind of books that these merchants keep.

Q But don't you know, Mr. Posadas, whether any of the Hindoo merchants or any of the Japanese merchants keep the Internal Revenue sales book?

A I remember having seen some internal revenue books which were kept by some Japanese merchants, but I don't know whether they kept their books in Japanese or in some other language.

Q And those internal revenue sales books which you remember having seen which were kept by Japanese, in what language were they kept? That is to say, were they kept in English, Spanish or some local dialect?

A As it was a matter of small tiendas, retail stores, if I remember correctly, there only appeared in the books the figures representing the daily sales.

Q Perhaps I should have asked, in questioning you about the internal revenue sales books, whether they were kept in Arabic numbers.

A They were so kept.

Q And the printed words in the forms furnished by the Bureau of Internal Revenue were in both English and Spanish, or were they in one language?

A Yes, the majority of our forms are printed in English and Spanish.

Q So that, if I have understood your testimony correctly, Mr. Posadas, with the exception of the few alien

merchants, if any, who may be keeping the Bureau of Internal Revenue sales books in Chinese, and those merchants who may still be keeping some of their records of purchases in Chinese, all of the records and information required by the Bureau of Internal Revenue for the purposes of the collection of taxes are furnished at the present time either in English or Spanish.

A All the forms required for the collection of internal revenue taxes are furnished by the office of the Bureau of Internal Revenue in Spanish and English. The purchase and sales books are not furnished by the Bureau of Internal Revenue, but the merchant or taxpayer is required to provide himself with those books.

Q Are those internal revenue sales books sold in printed form all over the islands or how are they prepared?

A The private printing shops are the ones who print and sale those books, not the Bureau of Internal Revenue.

Q And those forms of sales books are printed also in English and Spanish?

A Yes, sir, I believe that the greater part of those books are.

Q Referring again to the books of purchases required by Regulation No. 34, Exhibit T, am I correct in my understanding of your testimony, or of the testimony of other witnesses, that up to the present time that form for purchases has not been filed out by any of the merchants, or have some of them been complying with the regulation? What are the facts with reference to the book of purchases required by Regulation No. 34?

A Regulation No. 34 is in effect, and all the merchants who come within that regulation are obliged to comply with the provisions thereof. Now, we make exceptions of all those merchants who in their regular books of account include the purchases which they make. We only require of those who do not keep any kind of books of account the keeping of the book of purchases required by Regulation No. 34.

Q But what I wish to know particulary now, Mr. Posadas, is whether or not the merchants have been actually complying with the regulation with reference to those purchase books and whether you have been enforcing it to such an extent as to receive any considerable number of reports of purchases from any of the merchants.

A We do not require that a report of purchases be furnished to the Bureau of Internal Revenue, although the merchants are obliged to keep a record of the purchases which they make.

Q That book is intended only for the purpose of checking up the internal revenue sales books of other merchants, is it not?

A Up to a certain point, yes, and it also serves as a guide to determine whether or not a person should file an income tax return.

Q But is not the Bureau of Internal Revenue sales book a better guide by which to determine whether a person should file an income tax return?

A No, sir, because in order to determine the gross income it is necessary to know the value of the merchandise sold.

Q With the exception of the additional work of writing

the names and addresses of the persons from whom the purchases are made, this book of purchases required by Regulation No. 34 is as simply and easily kept in English or Spanish, or rather in Arabic numbers, as the Bureau of Internal Revenue sales book, is it not?

A I believe so.

Q If all these forms required by the Bureau of Internal Revenue and prepared in English or Spanish, and the records and information prescribed by Regulation No. 34, and also the merchants' coupons and the declarations for income tax, are correctly filled out and furnished, do they contain all the information required by the Bureau of Internal Revenue for the assessment and collection of taxes?

A Yes, they should contain it, but—

Q I am only asking you in the case that they are correctly filled out, if they contain all the information.

A *Yes, sir, they should contain it,* but not all the merchants are sufficiently posted on the laws and regulations of the Bureau of Internal Revenue to justify the presumption that they will include all the transactions subject to taxation. In my experience in the Bureau of Internal Revenue, we have found, not only on the part of small merchants, but also on the part of large merchants whose books are subjected to periodical inspections by auditors, that they have not declared all the items that they should declare, and for that reason the office found itself obliged to impose additional penalties for unpaid taxes.

Q *But, Mr. Posadas, if all the persons engaged in business for profit kept only the records and informa-*

tion required by your office, then there would be no necessity for the enforcement of Act No. 2972, would there?

MR. FELIX: I object to the question on the ground that anything touching upon or concerning the wisdom, convenience of necessity of a law is a matter for determination by the legislative branch of the government, and not even the courts are empowered to decide as to the wisdom, convenience or necessity of a law.

A With the exception of a very few forms which are required to be made out in detail, the greater part of the other forms do not show anything but a resume of the transactions, and in order to verify the correctness of those declarations, we would necessarily have to have recourse to the books kept by the merchants.

Q *But we are assuming, for the sake of this question, that the persons who engage in business for profit keep no books other than the records required by the Bureau of Internal Revenue. In that event, then, Mr. Posadas, there would be no necessity for the enforcement of Act No. 2972 so far as your office is concerned, would there?*

MR. FELIX: I object on the same grounds.

A *I don't know.* That supposition is in no way justified, inasmuch as a merchant, in order to carry on his business properly, would necessarily have to keep some books in which to record his transactions.

Q That's what I have been trying to prove here for some time, but, Mr. Posadas, haven't you and the Fiscal from the beginning of this trial, been engaged in an

effort to establish the fact that great, great numbers of the Chinese merchants keep and have to keep only the records required by the Bureau of Internal Revenue?

MR. FELIX: I object to the question on the ground that it is based upon an erroneous hypothesis. We have never tried to prove that, as the records of this hearing will show.

A The transcript of my testimony is the best answer to that question. I don't believe that I testified to that effect.

Q Now, to make the situation still clearer, Mr. Posadas, the only purpose of the enforcement of Act No. 2972, so far as your office is concerned, is to assist you in checking up the records and information required by you and furnished to you in these various forms prepared in English or Spanish?

MR. FELIX: I object to the question on the ground that this witness is not called upon to testify as to the purpose which the Philippine Legislature had in view in adopting Act No. 2972. The intention of the Legislature is clearly set forth in the explanatory note of the law and in the exhibits relative to the discussion of the law when it was still pending passage, which appear in the record.

A If Act No. 2972 were put into effect, it naturally would facilitate the inspection and checking up by the office of the taxes paid by the taxpayers.

Q Let's put the question in another form, Mr. Posadas: is it not a fact that the only possible benefit which the Bureau of Internal Revenue would derive from the enforcement of Act No. 2972 would be in so

far as it might assist the bureau in checking up the information required by its regulations?

A Yes, sir, and to determine whether any items subject to taxation had been omitted.

Q Another question, Mr. Posadas: don't you think that by means of Chinese acountants, much more satisfactory information could be obtained from books properly kept in Chinese than from books kept abominably in English or Spanish?

A Even though the books which are kept in a language other than Chinese were abominably kept, as long as they contain the entries of all the transactions carried out by a merchant or by a person subject to taxation, it would always be better than a book which is incomprehensible to the administrators of the bureau.

Q But I am asking you, upon the supposition that Chinese accountants might be used for the purpose of examining books of account kept in the Chinese language, dont' you think, Mr. Posadas, that the information which might thus be obtained from books regularly and correctly kept would be more satisfactory and reliable than books abominably kept in a language practically unknown to the merchant?

MR. FELIX: I object to the question on the ground that this hypothesis has been submitted to the witness many times, even to the point of being made the subject of a ruling by the Supreme Court.

A I believe I have already testified on that point, and I refer to my former testimony.

Q Mr. Posadas, in this written argument made by Mr. Jesus Cuenco, on behalf of the respondens, Exhibit 31,

it appears on page 5 thereof that Mr. Cuenco quotes you as follows: "Mr. Posadas repeatedly asserted before the Committee that due to the unintelligibility of the books of the Chinese merchants by reason of the language in which they are written, the public treasury is annually deprived of some millions of pesos." Did you make that statement?

MR. FELIX: I strongly protest against the unfounded statement made by counsel for petitioners in asserting directly that that document, Exhibit 31, was prepared by the Chairman of the Committee on Laws of the House of Representatives of the Philippine Islands for the benefit of the respondents. As counsel for our opponents who is propounding the question very well knows, the said document, Exhibit 31, was presented to the Speaker of the House of Representatives before the beginning of this hearing, and Mr. Gibbs should also know—if he wishes to be sincere—that that document was not prepared for the benefit of the respondents.

MR. GIBBS: What I meant to refer by the question was, whether there was not a mistake made in dating the document—whether it was not a document prepared in anticipation.

MR. FELIX: That document was published in the Manila press during the month of February.

A Yes, sir, in substance I believe that I so testified—that the government would be able to recover large amount of taxes which have not been declared.

Q Did you make that statement under oath?

MR. FELIX: I object to the question on the ground that it is immaterial.

A I don't remember exactly under what circumstances I testified before the Legislative Committee.

Q Don't you know that you were under oath at the time you made that statement?

A I don't remember now; the records of the Committee would be the best proof.

Q Well, are you prepared to testify now that the statement which I have just quoted from page 5 of that argument is true?

A I will say that if the Accounting Law is put into force, the Bureau of Internal Revenue could better administer the collection of taxes, in view of the fact that, as a result of the inspection of the books of the merchants which are kept in English or Spanish, we have discovered large entries which were not declared.

Q Well, you haven't any further data or facts than those heretofore testified to by you to support the correctness of that statement, have you?

A I refer to my answer to the former question by way of answer to this question.

Q Is it not a fact that in every instance where you or any of your inspectors suspect a Chinese merchant of underdeclarations of sales or income, you cause his books to be examined by a Chinese accountant?

A Yes, sir, not only so far as concerns Chinese, but all taxpayers without distinction as to nationality; but in the ordinary course of our work, regular inspections are made of the books of merchants to check up the declarations filed.

Q Mr. Posadas—in order to abbreviate the subject as much as possible—, is it not a fact that you only check

up the books of any merchants in order to determine the correctness of their sales reports and declarations for income tax when you suspect them of fraud?

A No, sir, not only in those cases, but we also examine the books even when there is no accusation or suspicion that they have committed fraud; and we also examine the books of the other merchants.

Q I don't know whether you were present when Mr. Nolting testified or not, but as I recollect, he testified that the system of the Bureau of Internal Revenue was to examine from time to time the books of different merchants of a sufficient number to keep all merchants advised of the possibility or probability of their books also being examined, and by this means to insure as far as possible their books being faithfully kept. Kindly state whether that is the system still followed by the Bureau of Internal Revenue, and if not, explain what the system is.

A I was not present when Mr. Nolting was testifying, but possibly the system that he outlined was followed in his time as Collector of Internal Revenue. At one time, when only a few people paid income tax, and when the sales tax had not been fixed at one per cent, as it has been during the past few years—and now it is one and one half per cent—, that system may have been followed. Our present system in the Bureau of Internal Revenue is to make a general checking up of all taxes paid, to satisfy ourselves as to whether or not all taxes due have been paid. We do not confine this inspection to those merchants suspected of fraud.

Q Do you mean to say that the sales tax reports and the

declarations of income tax of all the persons who pay income tax and sales tax are checked up by your bureau each year from the books of the persons who pay them?

A With the facilities which the bureau has at present, we make such inspections as we can. Now, then, probably not all the declarations have been checked up so far, on account of lack of personnel.

Q I am referring to merchants and businessmen and professional men other than Chinese: do you inspect them once a year, or once in five years?

A According to the work which we have in the office. As I have stated, our personnel is insufficient to make a general annual inspection.

Q Now, do you check up the sales reports and the declarations for income tax of persons other than Chinese as often as once in three years?

A I can't state exactly the time which elapses between the examinations which we make of the books of the taxpayers, but everything that can be inspected is inspected within the possibilities of the personnel which the Bureau of Internal Revenue has at its disposal.

Q Without reference to the Chinese merchants, will you testify positively that you examine the books of account of merchants paying the sales tax, or other persons paying the income tax, as often on an average as once in five years?

A As I have stated before, I can't fix nor testify as to the period of time which elapses between the inspections that we make, but within the possibilities of the present personnel of the Bureau of Internal Revenue, we inspect as many taxpayers as we can.

Q Did you employ Mr. Riepe to act as a detective for the Bureau of Internal Revenue in obtaining invoices from Chinese merchants?

A No, sir, I don't remember having employed that gentleman for that purpose.

Q Did you employ Mr. Shlosser for that purpose?

A No, sir, I didn't employ him either. I remember that Mr. Shlosser was in my office, and he offered to assist the government in this matter.

Q Did you pay him or agree to pay him any compensation?

A No, sir.

Q What was the benefit which Mr. Shlosser was to derive from this work on his part?

A I don't know.

Q Don't you know that it was done with the expectation on his part that in the event that Act No. 2972 should be enforced, the Chinese would be compelled to hire outside bookkeepers and that he would obtain lucrative employment as a bookkeeper?

MR. FELIX: I object; all this is wholly immaterial and incompetent.

A I don't know what the object of Mr. Shlosser was he can tell that better than anybody else.

Q Wasn't that feature of his service discussed with you?

A I don't remember exactly whether I discussed that point or not, only he was in the office one day to ofter his services to assist the government in ascertaining which Chinese establishments have Chinese who can read and write Spanish or English.

Q Did he show you one of his business cards, entitled, "Shlosser & Co.," advertising his business as a bookkeeper?

MR. FELIX: I object; all this is wholly immaterial. What relation can it have to the case?

Q Well, you knew he was a bookkeeper, did you not, or that he pretended to be a bookkeeper?

A I didn't know what Mr. Shlosser was, as I didn't even know him when he came to my office. I don't remember having met him anywhere.

Q You knew, didn't you, Mr. Posadas, that that was his motive in obtaining this information—the idea of advancing his own interests as a bookkeeper with the Chinese?

A I don't know what his real object was.

Q Do you testify that he did not so tell you?

A I don't remember.

MR. GIBBS: No further questions.

MR. FELIX: (Handing a paper to Mr. Gibbs.) Mr. Gibbs, I have found an old circular, and I wish to deliver it to you to supplement those that I delivered to you here the other day.

(The document referred to was then marked as Exhibit U.)

MR. GIBBS: Inasmuch as Exhibit R, produced by the witness at the last hearing, is a typrwritten copy of Circular Letter No. 467, which already appears as Exhibit C at pages 3 to 5, inclusive, of the bill of exceptions in the case of Young *vs.* Rafferty, heretofore offered in evidence as Exhibit C, we shall not offer in evidence the typewritten copy, but we do offer in evidence Exhibits S, T and U.

MR. FELIX: No objection.

COMMISSIONER: I wish to state at this point that the Supreme Court has evorruled the objection of the Fiscal against

the recalling of Mr. Posadas by attorney for petitioners for further cross-examination, and has ruled that he is still a witness for respondents and that in such capacity he may be recalled by petitioners for further cross-examination.

MR. FELIX: I except to the ruling of the court.

REDIRECT EXAMINATION BY MR. FELIX:

Q If the Chinese merchants and manufacturers purposely omitted or through negligence or ignorance failed to furnish the data called for in the forms and records required by the Bureau of Internal Revenue, would your office have a complete record of the transactions of the Chinese merchants and would it, as a consequence, be in position to determine the proper amount of taxes which those merchants should pay?

MR. GIBBS: I object to the question on the ground that it calls for a conclusion of the witness upon a question the answer to which is self-evident.

A No, sir.

RECROSS-EXAMINATION BY MR. GIBBS:

Q If the Chinese merchants were forced to keep their books in English or Spanish, and omitted from the English or Spanish books some data which they might have failed to report in their sales coupons or in their Bureau of Internal Revenue sales books, you would be in exactly the same position as if they omitted some data from books kept in Chinese, would you not?

A Certainly.

Q So that if the omission of data from the forms required by you to be kept in Arabic numbers were fraudulent, you would naturally expect that the same omissions would occur in the regular books of the Chinese, would you not?

MR. FELIX: I object to the question on the ground that it is without foundation.

A I don't know.

Q But, Mr. Posadas, as a man of experience and knowledge of the world, you would not expect a merchant to fraudulently omit items of sales made by him from the report made to your office and enter the item thus omitted in his regular books as a means of assisting you in detecting the fraud, would you?

MR. FELIX: Books kept in what language?

MR. GIBBS: In any language.

A Anything is posibble. If a taxpayer intends to defraud the government, it could happen that the items omitted in his declarations have also been omitted in his books.

Q When will the compiling of the information ordered by the Supreme Court be finished by your office?

A We are making an effort to complete that information before the end of March.

Q So that we may hope to have it before that time?

A Well, I can't tell; we are trying to rush the work and have it completed as soon as possible.

MR. FELIX: Without waiving the demurrer filed against the new amended complaint, we announce our purpose of filing a new answer which will cover the allegations of the new amended complaint.

MR. GIBBS: We will act on the proposed amendment when it is presented. In the meantime, in view of the failure of the respondents to furnish the information required by the Supreme Court within a reasonable period of time, we wish to take a few days in which to decide whether or not we shall await the furnishing of these data or whether we shall submit the case without them.

MR. FELIX: I request that the petitioners announce whether they have any rebuttal evidence to present, apart from the question of the data required from the Bureau of Internal Revenue, which has not yet been furnished.

MR. GIBBS: While deciding upon the question of awaiting the information required by the Supreme Court, we shall also determine what further evidence we may wish to offer.

MR. FELIX: The attorneys for the other side, during the course of the presentation by respondents of their evidence, were continually pressing them and hurrying them in the presentation of their proofs. Under those circumstances, we believe it is only fair that the attorneys for the petitioners state now whether or not they intend to offer any rebuttal evidence, and in case they decline so to state this afternoon, I ask that the Commissioner submit the matter to the Supreme Court, in order that they may set a time within which the petitioners must present their rebuttal evidence, in case they have any to present.

The hearing was then, at 4:45 o'clock p. m., adjourned sine die.

During the trial the petitioners introduced in evidence Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, and Q, and the respondents introduced in evidence Exhibits 1, 2, 3, 4, 5, 6-A, 6-B, 6-C, 6-D, 6-E, 7-A, 7-B, 7-C, 8, 9-A to 9-J, 9-K, 10, 11, 12, 12-A to 12-E, 13-A to 13-KK, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33-A to 33-B. The petitioners also identified Exhibits R, S, T, and U, which are Internal Revenue regulations, but were not introduced in evidence as they appear on pages 3 to 5 of Exhibit C. Exhibit 1 of the respondents was identified but was not presented. Said exhibits are as follows:

Exhibit "A"

Manila, June 27, 1923.

Mr. W. Trinidad,
Collector of Internal Revenue,
Bureau of Internal Revenue,
Manila, P. I.

Dear Sir:

Will you kindly furnish me for use in the prohibition case now pending in the Supreme Court of the Philippine Islands entitled Yu Cong Eng, et al., petitioners, *vs.* W. Trinidad, as Collector of Internal Revenue, et al., respondents, the following information:

(1) The total sales tax collected in the Philippine Islands each year for the years 1919-1922 inclusive.

(2) The total income tax collected in the Philippine Islands each year for the years 1919-1922 inclusive.

(3) The total number of merchants of all nationalities doing business in the Philippine Islands each year for the years 1919-1922 inclusive.

(4) The total number of Chinese merchants doing business in the Philippine Islands each year for the years 1919-1922 inclusive.

(5) The share or percentage of the total sales tax paid by the Chinese each year for the years 1919-1922 inclusive.

(6) The share or percentage of the total income tax paid by the Chinese each year for the years 1919-1922 inclusive.

(7) The names, nationalities and residences of all the Internal Revenue Inspectors and accountants employed in connection with the inspection, investigation and auditing of the books of the merchants of the Philippine Islands.

(8) Whether or not all Chinese merchants keep their books of account in Chinese, and if not, specify the number of Chinese merchants who keep their books of account in languages other than Chinese.

(9) The approximate number of

Chinese employed by the Chinese merchants in the Philippine Islands.

(10) Whether or not all the employees of the Chinese merchants are Chinese, with a few rare exceptions.

(11) Whether or not all the Chinese in the Islands with the exception of a few Chinese servants are engaged in commerce or in the employ of Chinese merchants.

I am informed that you suggested and prepared a proposed substitute or amendment of Act 2972, providing for the registration and stamping of the books of Chinese merchants, and in which proposed substitute the merchant was permitted to keep his books in whatever language he saw fit. Will you kindly inform me whether you did propose such an amendment or substitute, and if so, furnish me a copy thereof. I should like to have the foregoing information, if possible, previous to the presentation of proofs on next Monday afternoon.

Thanking you in anticipation, I am

Sincerely yours,

Exhibit "B"

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
OFFICE OF THE COLLECTOR
MANILA

June 29, 1923.

Mr. A. D. Gibbs,
Attorney at Law,
Manila.

Sir:

Your communication of the 27th instant, addressed to Mr. W. Trinidad, has been referred to this Office. In reply thereto, I have the honor to advise as follows:

(1) The total sales tax collected in the Philippine Islands for the year 1919 amounts to ₱13,4[illegible]0,584.70; for the year 1920, ₱16,657,416.20; for the year 1921, ₱10,352,-773.55; and for the year 1922, ₱9,985,129.74.

(2) The total income tax collected in the Philippine Islands for the year 1919 amounts to ₱3,412,769.98; for the year 1920, ₱4,252,-632.58; for the year 1921, ₱4,964,793.57, and for the year 1922, ₱1,997,759.67.

(3) The total number of merchants (holders of C-1 and C-5 privilege tax receipts) of all nationalities doing business in the Philippine Islands for the year 1919 is 143,245; for the year 1920, 154,305; for the

year 1921, 146,953; and for the year 1922, 140,024.

(4) No statistics kept.
(5) No statistics kept.
(6) No statistics kept.
(7) Internal Revenue Agents and Agent's Assistants actually doing inspection work number 88, of which 2 are Americans and the rest Filipinos. Income Tax Examiners and Assistant Examiners number 24, all being Filipinos. Four Chinese Accountants are actually employed, one being detailed in the Income Tax Division, two in the Inspection Division, and one in the Secret Service Section.

(8) Data requested are now in the hands of the City Fiscal.

(9) No statistics kept.
(10) No statistics kept.
(11) No statistics kept.

As regards the proposed substitute or amendment of Act No. 2972, please be informed that the desired information cannot be given, the undersigned not having proposed the amendment referred to.

Very respectfully,

JUAN POSADAS, Jr.,
Acting Collector of Internal Revenue.

Exhibit C is a copy of the bill of exceptions in the case of Young *vs.* Rafferty, G. R. No. 10951.

Exhibit "D"

BUREAU OF INTERNAL REVENUE

Manila

June 30, 1923.

TO WHOM IT MAY CONCERN:

This is to certify that the following statement shows the assessments made during the year 1922 by the field examiners of the Income Tax Division, including income tax assessments originated by the Inspection Division (Taxes ₱8,610.00 and compromise ₱1,390.00):

Item	Taxes	Additional Assessments Penalties	Compromises	Total
Income	₱ 319,132.81	₱ 63,661.11	₱10,480.00	₱ 396,173.92
Banks & Bankers.	825,256.47	206,314.14	....	1,031,570.61
Franchise	2,811.74	702.94	....	3,514.68
Other taxes	1,233.85	106.99	1,619.26	2,960.10
Total.....	₱1,148,434.87	₱273,685.18	₱12,099.26	₱1,434,219.31

JUAN POSADAS, JR.,
Acting Collector of Internal Revenue.

Exhibit E is an Internal Revenue book of Chan Hang Chiu.

Exhibit F

March 16, 1923.

Messrs. Gibbs, McDonough & Johnson,
Attorneys-at-law,
301-2 Roxas Building,
Manila.

Dear Sirs:

With reference to your inquiry about the number of dialects spoken in the Philippines and the num-

ber of people who speak each dialect, I take pleasure in informing you as follows:

There are 43 languages spoken in the Philippines, divided into 87 dialects.

Of these languages there are 6 with extensive printed literature, to wit:

		Inhabitants
1.	TAGALOG, spoken by	1,789,049
2.	BISAYA, with its two large groups:	
	(a) *Panayano*, spoken by	1,289,142
	(b) *Cebuano*, spoken by	1,848,613
3.	ILOKANO, spoken by	988,841
4.	BIKOL, spoken by	685,309
5.	PAMPANGO, spoken by	337,184
6.	PANGASINAN, spoken by	381,498
	Total	7,319,631

There is a second group, with considerable printed literature, to wit:

		Inhabitants
1.	BISAYA:	
	(a) Of Samar, spoken by	601,683
	(b) Of Aklan, spoken by	137,772
2.	IBANAG, spoken by	136,134
	Total	875,589

There are 19 dialects, with a little literature, to wit:

		Inhabitants
1.	SULU, spoken by	87,400
2.	BONTOK, spoken by	29,258
3.	BAGOBO, spoken by	5,600
4.	ISINAI, spoken by	2,647
5.	IVATAN, spoken by	6,392
6.	GADDANG, spoken by	16,240
7.	MAGINDANAO, spoken by	79,850
8.	TIRURAI, spoken by	7,150
9.	IFUGAO (PURE), spoken by	86,000
10.	ILONGOTE, spoken by	2,150

11.	KALAMIAN, spoken by	11,350
12.	TAGBANUA, spoken by	10,000
13.	TINGGUIAN, spoken by	27,648
14.	IGOROT BAUKOK, spoken by	12,000
15.	IGOROT INIBALOI, spoken by	12,621
16.	LANAO INIBALOI, spoken by	58,350
17.	MANGYAN INIBALOI, spoken by	5,250
18.	SAMBAL INIBALOI, spoken by	39,715
19.	SUBANUM INIBALOI, spoken by	10,000
	Total	509,621

There are 17 dialects without printed literature, but with short vocabularies published, to wit:

		Inhabitants
1.	ATA, spoken by	1,000
2.	BILA-AN, spoken by	8,000
3.	GADDANG, spoken by	5,000
4.	IFUGAO, spoken by	45,000
5.	IGOROT KANKANAI, spoken by	27,887
6.	ILONGOT IBILAO, spoken by	2,000
7.	ISAMAL, spoken by	983
8.	KALINGA, spoken by	6,000
9.	MANDAYA, spoken by	5,000
10.	ABRA DE ILOG, spoken by	2,000
11.	BAKO, spoken by	2,000
12.	MANOBO, spoken by	30,000
13.	BOLINAO, spoken by	16,431
14.	SUBANUN-DAPITAN, spoken by	8,450
15.	SUBANUN BULUAN-KIPIT, spoken by	6,000
16.	SUBANUN TUKURAN-KIPIT, spoken by...	7,000
17.	TAGAKAOLO, spoken by	7,100
	Total	180,451

There are other dialects—about 30—of which there are only verbal informations or manuscript vocabularies, although spoken by a considerable number of people—454,672.

Very sincerely,

(Sgd.) T. H. PARDO DE TAVERA,
Director of Philippine
Library and Museum, Manila.

Exhibit "G"

According to the Statistic of 1913, the total number of wholesale Chinese merchants was 3,335
and the total number of retail Chinese merchants was 8,445

Total amount of sales made by these 11,780
was ₱320,494,902.00.

Estimate of the distribution of the ₱320,494,902.00 sales among the Chinese merchants.

Wholesale Chinese Merchants

No. of Chinese merchants	Average amount of sales	Total
50	₱1,000,000.00	₱50,000,000.00
150	500,000.00	75,000,000.00
400	100,000.00	40,000,000.00
2,735	40,000.00	109,400,000.00
Total. 3,335		₱274,400,000.00

Subtracting ₱274,400,000—from ₱320,494,-902—there remains a balance of ..... ₱46,094,902.00

Distributing the ₱46,094,902—among the 8,445 retail Chinese merchants, the average amount of sales by each of these 8,445 retail merchants would be 5,446.40

Basing our calculations on the above, it is believed that the annual net incomes of 8,445 Chinese retail merchants would not exceed ..... ₱500.00 each and 2,000 of the 3,335 wholesale merchants would not exceed ..... ₱1,000.00

Under normal times the average profit of wholesale merchants is from 3 to 5% of their sales and that of the retail merchants is from 5 to 15%. During the war the margin of profit was, of course,

much greater. It is believed that during the last three years about 90% of the business houses have been operated at a loss.

Exhibit "H"

1. Yu Biao Suntua & Co.
2. Siy Cong Bieng & Co.
3. Dy Buncio & Company.
4. Ty Camco Sobrino.
5. Sy Liong & Co.
6. Carlos Palanca.
7. Mariano Velasco.
8. Li Seng Giap & Co.
9. Lim Tuico & Co.
10. Lim Jiengco & Co.
11. Gochioco & Co.
12. Yutivo Sons & Co.
13. Uy Chaco & Co.
14. Cham Samco & Co.
15. Cu Yi Gam Hermanos.
16. O'Chu Ching & Co.
17. Tan Ching Guan & Co.
18. Go Hoc & Company.
19. Cu Un Jieng & Co.
20. Go Tamco & Co.
21. Dee C. Chuan & Co.
22. Yek Hua Trading
23. Go Tauco & Co.
24. Tan Samco.
25. Yap Tico.
26. Joaquin Castro & Co.
27. Tan Un Chuan & Co.

28. Go Tiacco Hermanos.
29. Can Su Co & Bros.
30. Jua Hing Company.
31. Enriquez Echauz
32. Yap Tico Iloilo
33. Uy Sin Bin.
34. Barios Chio.
35. Co O'cco.
36. Lu Teng Siu.
37. Tan Yak Sing.
38. Siy Chian & Co.
39. Tan Tunco.
40. Herederos de Pio Barretto.
41. Co Tiong Co.
42. Uy Eng Ko.
43. Ty Chuaco.
44. Un Soco.
45. Go Ko Lay.
46. Co Cuanco.
47. Hao Cuy Ping.
48. Cheng Liaco.
49. Tanqinco.
50. Teck Bee & Co.

Exhibit "I"

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF FINANCE
MANILA

January 12, 1923.

Sir:

In compliance with the request contained in a communication from your office of the 3rd inst., I beg to enclose herewith a bill to take the place of the two

which have already been forwarded to your office, amending Act No. 2972. This Department believes that said bill embodies certain features which will materially facilitate the enforcement of the tax laws of the Government, and in addition has the following advantages, which are lacking in the present law:

1. The preservation of the books for a certain length of time, which will insure their examination on the part of revenue officers.

2. No provision may be construed as requiring the performance of certain work that is not necessarily needed by the Government.

Very respectfully,

ALBERTO BARRETTO,
Secretary of Finance.

The Honorable,
The President of the Senate,
Manila.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
EXECUTIVE BUREAU
MANILA

July 11, 1923.

I hereby certify that the foregoing document consisting of one page is a true and correct copy of the record on file in this office.

(Sgd.) FELICIANO OCAMPO,
Assistant Chief, Executive Bureau.

SIXTH PHILIPPINE LEGISLATURE
First Session

H. No. ....

(No. .....)

AN ACT TO AMEND SECTION ONE OF ACT NUMBERED TWO THOUSAND NINE HUNDRED SEVENTY-TWO, ENTITLED "AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION," AND TO PROVIDE THAT BOOKS OF ACCOUNT BE KEPT IN CERTAIN LANGUAGES, THAT SAID BOOKS BE REGISTERED AND THAT THE SAME BE DECLARED OFFICIAL DOCUMENTS FOR THE PURPOSES OF TAXATION, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Section 1 of Act Numbered Two thousand nine hundred and seventy two is hereby amended to read as follows:

"SECTION 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, to keep its account books in any language other than English, Spanish or any local dialect; *provided, however*, that said

person, company, partnership or corporation may keep its books of account in any language other than those prescribed herein, provided that before using said books the same are presented to the Justice of the Peace of the municipality wherein said person, company, partnership or corporation has its commercial establishment in order that said Justice of the Peace may put on the first page of each book signed memorandum of the number of pages contained therein, and affix his official seal to each page of each book. *Provided, further*, that the Secretary of Finance may require said person, company, partnership or corporation to furnish a translation duly certified, in English, Spanish or any local dialect, of any entry or entries contained in said books when, in its opinion, such translation is necessary for the purpose of insuring the collection of taxes or other fees payable to the Government or for any other purpose provided by law.

"All books of account kept by any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands shall be considered official documents for the purposes of taxation, and the persons keeping them, as well as their heirs or successors, shall preserve them for a period of five years from the date of the entry of the last transaction, unless the same are destroyed

before the expiration of said period with permission of the Collector of Internal Revenue."

"SECTION 2". This Act shall take effect on January 1, 1923.

Approved.

Exhibit "J" of the petitioners.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
EXECUTIVE BUREAU
MANILA

July 11, 1923.

I hereby certify that the attached documents consisting of (1) a letter, (2) an explanatory note of a Bill and (3) a Bill, are true and correct copies of the original on file in this Bureau.

FELICIANO OCAMPO,
Assistant Chief, Executive Bureau.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF FINANCE
MANILA

December 16, 1922.

Sir:

Referring to the petition from the Chinese residents of the Philippine Islands, which has been referred to this Department for comment and recommendation, I beg to submit herewith bills amending the Accounting Law (Act No. 2972). In my opinion, the adoption of any such bill will remove the objectionable feature of the present law without depriving

the Government of reasonable means for the enforcement of the tax laws.

As a further safeguard to the interests of the public in the collection of taxes, I am taking advantage of this opportunity to recommend earnestly the passage of an amendment to the Internal Revenue Law establishing a surcharge of 100 per cent of the tax due for false or fraudulent returns. The bill for this purpose is inclosed herewith also.

In order to avoid delays, copies of this letter as well as of the bills have been sent direct to the President of the Senate and the Speaker of the House of Representatives.

Very respectfully,

(Sgd.) ALBERTO BARRETTO,
Secretary of Finance.

To His Excellency,
The Governor-General,
Manila.

Inclosures.

SIXTH PHILIPPINE LEGISLATURE
FIRST SESSION.

H. B. No.....

Presented by.....

EXPLANATORY NOTES

Under the existing law, persons engaged in business in the Philippine Islands are required to keep their books of account in either English, Spanish or one of the local dialects. This proposed measure is intended to enable such persons to keep their books

of account in any language other than those mentioned, and to provide for the authentication of such books of account and for the preservation of the same, with a view to safeguarding the interests of the public in the collection of taxes without causing unnecessary hardship on the taxpayer.

Representative from

SIXTH PHILIPPINE LEGISLATURE
FIRST SESSION.

H. No. .....

(No. .....)

AN ACT TO PROVIDE FOR THE REGISTRATION OF ACCOUNT BOOKS, TO DECLARE THE SAME PUBLIC RECORDS FOR PURPOSES OF TAXATION, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.

Be it enacted by the Senate and House of Representatives of the Philippine Islands in Legislature assembled and by the authority of the same:

SECTION 1. Any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, desiring to keep books of account in any language other than those prescribed by existing law shall, before using such books, present the same to the justice of the peace of the municipality where such person, company, partnership, or corporation has commercial establishments, in order that said justice of the peace may put on the first page of each one a signed memorandum of the number of pages contained in the book and stamp his official seal on

all the sheets of each book. Any book of account certified and sealed in the manner herein prescribed shall be *prima facie* evidence of the facts therein stated.

SECTION 2. All books of account kept by any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands shall be considered as public records for purposes of taxation, and persons keeping them and their heirs or successors shall preserve the same for a period of five years computed from the date of the last entry of transaction had, unless sooner destroyed upon permit of the Collector of Internal Revenue.

SECTION 3. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos or by imprisonment for not more than two years, or both.

SECTION 4. This Act shall take effect on January 1, 1923.

Approved,

* * *

Exhibit "K"

Petitioners.

HOUSE OF REPRESENTATIVES
MANILA

August 3, 1923.

I certify that the attached pages 63 to 71 of the Journal for February 7, 1921, are a true and correct

copy of the original on file in the office of the Secretary of this House.

FELICIANO GOMEZ,
Secretary, House of Representatives.

LANGUAGE IN WHICH ACCOUNT BOOKS SHALL BE KEPT.

THE MINUTE CLERK, reading:

HOUSE BILL No. 658.

(Introduced by Representative Urgello.)

EXPLANATORY STATEMENT

Not all the merchants established in the Philippine Islands being of the same nationality, some of them are keeping their account books in their native language. This renders the examination of these books by government agents somewhat difficult, as in many cases the cooperation of a translator is required, which is a burden for the public exchequer.

Uniformity and facility of examination and revision of these books require that the same be kept in English or Spanish by the merchants, whether individuals or corporations.

This is the purpose of the Bill herewith.

(Sgd.) VICENTE URGELLO,
Representative, 3rd District of Cebu.

AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.

Be it enacted by the Senate and House of Representatives of the Philippines in Legisla-

ture assembled and by the authority of the same:

SECTION 1. It shall be unlawful for any person engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect: *Provided, however*, That the Secretary of Finance may make such exceptions as he may consider necessary in favor of persons for whom, in his judgment and upon examination and investigation, it may be impossible to comply with the provisions of this Act.

SEC. 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.

SEC. 3. This Act shall take effect on July first, nineteen hundred and twenty-one.

Approved,

THE SPEAKER. The Commtitee has the floor.

SR. GENEROSO. Mr. Speaker, the Bill now in order, the passage of which is recommended by the Committee on Revision of Laws, tends to remedy an evil observed in the manner in which certain merchants keep their account books. It has been observed in practice that, although English is the official language in the Philippines and English and Spanish in

the courts of justice, certain merchants keep their books in a language other than English or Spanish, which gives rise to much difficulty in connection with certain examinations that government officials have to make of such books, besides creating many other difficulties, and in order to put a stop to these, the Bill has been prepared which I now propose be passed.

SR. LOZANO ASKS A FEW PARLIAMENTARY QUESTIONS

SR. LOZANO. Mr. Speaker, a few questions of the gentleman.

THE SPEAKER. The gentleman may reply if he so desires.

SR. GENEROSO. Yes, sir.

SR. LOZANO I wish to state that although I have learned that this Bill was to be taken up to-day, I desire to know whether this Bill has recently been replaced by a corrected Bill.

SR. GENEROSO. Yes, sir.

SR. LOZANO. And in this corrected Bill there appears, on lines 6 to 10, a proviso reading: "*Provided, however*, That the Secretary of Finance may make such exceptions as he may consider necessary in favor of persons for whom, in his judgment and upon examination and investigation, it may be impossible to comply with the provisions of this Act."

Does not Your Honor believe that this addition will neutralize the entire effect of this Act?

SR. GENEROSO. I will say, in the first place, that the Bill the passage of which is recommended is the corrected Bill, so that there is no necessity of mentioning the uncorrected Bill.

SR. LOZANO. Yes, sir; but this Bill has been before the House without that proviso.

SR. GENEROSO. In concrete terms, what does the gentleman from Iloilo desire me to answer?

SR. LOZANO. That the original Bill made no exception in favor of anybody, while in this corrected Bill there is a proviso making an exception in favor of certain persons which, in the judgment of the Secretary of Finance, may be unable to comply with the Act. Does not Your Honor think that if we really legislate with the intent of enforcing the precepts of the law, we must eliminate that exception allowed to the Secretary of Finance in favor of certain persons?

SR. GENEROSO. The Committee has seen fit to concur in the amended Bill because it believes that we legislate for the benefit of all.

SR. LOZANO. Mr. Speaker, an amendment.

THE SPEAKER. The gentleman from Iloilo has the floor.

LOZANO'S AMENDMENT

SR. LOZANO. Mr. Speaker, I move that the entire proviso in section 1 of the Bill be stricken out.

THE SPEAKER. What does the Committee say?

SR. GENEROSO. Mr. Speaker, the Committee does not accept the amendment of the gentleman from Iloilo.

THE SPEAKER. The gentleman from Iloilo may state his reasons for his amendment.

SR. LOZANO ARGUES IN FAVOR OF HIS AMENDMENT

SR. LOZANO. Mr. Speaker, having read the corrected Bill and made my motion for an amendment,

I am now more than ever convinced of the necessity of making this amendment, for several reasons. As I said before, if this amendment is passed, or rather, if this Bill is passed with the amendment introduced by the Committee, we shall neutralize the effects of the very Bill, because if we legislate in accordance with the intent of the author of this Bill, that the law be complied with so far as account books are concerned, we must necessarily arrive at the conclusion that this law must be a general law for all, without exceptions of any kind, because otherwise it would be a class or personal legislation and therefore unjust, because not all could be compelled to comply with it, in view of that provision of the law. If we agree with the Committee, what must happen is that in a community composed of so many foreign elements in business as ours who, according to the law, must keep their account books in English or Spanish, any of them can take advantage of that provision of law and allege that it is impossible for him to comply with the Act, because he knows neither English nor Spanish. What would happen? The law would be only for a few instead of all, because every one could look for an excuse. The Spaniard would say that he does not know English; but could keep his books in Spanish. The Chinaman would say that he does not know English or Spanish, and could not be obliged. The Japanese or Filipinos could also make excuses and say they do not know English, but know Japanese or one of the local dialects. As I say, this proviso in the Bill makes the law a dead letter, and its enforcement would be defeated so far as certain determined

persons are concerned, and there is no reason while these persons should be exempted from complying with the law, because if we exempt a single person on account of inability to comply with the law, everybody would want the same thing; everybody would find some excuse why it is impossible for him to comply with that law and would consequently have to be exempted from complying with it. The mover of this Bill has alleged here that under the present circumstances it is impossible to obtain bookkeepers to keep the account books in English or Spanish, but the law does not require these accounts to be kept by a bookkeeper. I believe a methodical, truthful, and detailed statement of the daily transactions of the business will be sufficient, seeing that the law does not insist upon double-entry bookkeeping. I believe that the law would sanction single-entry books of account kept in an intelligent manner. Consequently, there is no reason for exemptions in favor of some persons unable to comply with the law, because they find it impossible to do so. If, as I said at the beginning, legislation must be general and not for determined classes or persons, this Bill must be passed without this proviso subsequently introduced by the Committee.

SR. GENEROSO ARGUES AGAINST THE LOZANO AMENDMENT

SR. GENEROSO. Mr. Speaker, the Committee does not accept the amendment for the following reasons: The proviso is a new clause which the author of the bill himself asked to have introduced. According to said author, he came to that conclusion because he

had been told that in some cases it would be completely impracticable for certain merchants to keep their books in English or in Spanish. The Committee, convinced that we are here, as the gentleman from Iloilo has said, to look out not only for the welfare of a determined class of residents of these Islands, but for the interests of all, with justice and respect for the rights of all, has seen fit to recommend the amendment proposed by the author of the Bill himself.

SR. MORALES (L.) ASKS A FEW PARLIAMENTARY QUESTIONS

SR. MORALES (L.) Mr. Speaker, a few parliamentary questions of the gentleman.

THE SPEAKER. The gentleman may reply if he so desires.

SR. GENEROSO. Yes, sir.

SR. MORALES (L.) May we know in what cases it would be impossible to comply with the provisions of the Bill?

SR. GENEROSO. I do not consider I am under obligation to say in what cases; it is a pity that the author of the Bill is not present. But I may state the case, for example, of a foreign corporation recently formed, which for the moment finds it impossible to get men able to keep books in Spanish or English, because it has its own bookkeepers, and which could not comply with the law. Such cases are very isolated, and it is left to the discretion of the Secretary of Finance to determine whether it is necessary to suspend the effects of the Bill in the case of such a corporation. I do not believe we doubt the honesty of the Secretary of Finance.

SR. MORALES (L.) So Chinese, Japanese and other merchants not knowing Spanish or English are exempted?

SR. GENEROSO. I think so. As we do not know exactly in what cases the law can be applied, we leave that matter to the discretion of the Secretary of Finance.

SR. MORALELS (L.) I then ask that this Bill be laid on the table until its author can say in what cases certain merchants shall be exempted, because otherwise we cannot pass the Bill.

SR. GENEROSO. Mr. Speaker, the Committee has not introduced anything of its own. As I said before, the author himself filed this amended Bill, in lieu of the original Bill, which was not corrected. As regards the statement of the gentleman from Iloilo that the proviso will neutralize the purpose of the Bill, I affirm that the Act will be general, that it will be for all, and that the only exception made is for cases in which the Secretary of Finance sees that a certain merchant cannot possibly comply with the provisions of the Act.

SR. LOZANO ASKS SEVERAL PARLIAMENTARY QUESTIONS

SR. LOZANO. Mr. Speaker, a few parliamentary questions of the gentleman.

THE SPEAKER. The gentleman may reply if he so desires.

SR. GENEROSO. Yes, sir.

SR. LOZANO. Can the gentleman tell me who are those merchants who, though merchants, cannot keep the account books in English or Spanish?

SR. GENEROSO. How do you expect me to answer, if I do not know it? This is not legislation concerning an existing case, but a possibility. What would be the situation of a merchant who is for the moment unable to get the necessary personnel to keep the account books in English or Spanish? Would the law be so cruel as to compel that merchant to keep his books in English or Spanish in spite of this?

SR. LOZANO. But how much personnel would be required to keep the account books in English or Spanish? Would there be any necessity of employing an interpreter or translator?

SR. GENEROSO. I leave answer to your discretion and shall continue.

(Continuing.) As I was saying, Mr. Speaker, the proviso does not speak of the case, cannot possibly refer to the case, cited by the gentleman from Iloilo, of a Spanish or Filipino merchant claiming not to know English. I do not deem it necessary to reply to the fear expressed by the gentleman from Iloilo. The proviso can refer only to a merchant momentarily unable to comply with the law because he has not sufficient personnel to keep his account books in English. It is true that the law does not require the account books to be kept by a graduate in bookkeeping; but it is likewise true that the merchant would be interested in looking for the most competent personnel to keep his books, and that personnel must have the confidence of the merchant. The merchant cannot be expected to be able to comply with this Act the moment it is passed. Let us suppose the case of a Russian firm established here

as branch of another outside of the Islands and keeping its account books in Russian. How could we oblige that firm to contract immediately a man knowing Spanish to keep its account books? Moreover, I do not see why it should be presumed that the Secretary of Finance should in this case favor any given person or merchant. What right and reason is there for such a supposition? The Legislature reposes confidence in the Secretary of Finance as one of the members of the cabinet of this Government. What reason is there for not delegating the authority to decide in what cases it is impracticable to carry out the provisions of this Act? It should be borne in mind that for the simple reason that the Secretary of Finance, on account of his official position, the continuous performance of his duties, his immediate and direct relations with the operations carried on in the country, is better qualified than we are to know whether or not the law is in fact absolutely practicable. Of course, Mr. Speaker, if we desire to look farther beyond, if we depart from the just point of view, we might cite the effects pointed out.

SR. LOZANO ASKS OTHER PARLIAMENTARY QUESTIONS

SR. LOZANO. Mr. Speaker, a few more parliamentary questions of the gentleman.

THE SPEAKER. The gentleman may reply if he so desires.

SR. GENEROSO. Yes, sir.

SR. LOZANO. Where does it appear to the gentleman that I have put in doubt the capacity or reliability of the Secretary of Finance in the applica-

tion of this part of the law? Has he heard any one doubt the capacity or discretion of the Secretary of Finance in this respect?

SR. GENEROSO. I so understood the gentleman from Iloilo, though I suppose he did it in good faith.

SR. LOZANO. Not even in bad faith, because I have not said anything about the Secretary of Finance.

SR. GENEROSO. That means you did not wish us to understand that?

SR. LOZANO. I wanted to say that, but in another way.

SR. GENEROSO. (Continuing). As I was saying, unless we look very far in the field, the defect pointed out does not exist. And it does not exist, because I suppose and do honestly believe that the Secretary of Finance will make a just and honest use of the discretion granted him by the proviso under discussion. The sole object is to give equal protection and opportunity to all.

THE SPEAKER. Are we ready to vote on the amendment?

THE HOUSE. Yes.

THE SPEAKER. Read the amendment.

THE MINUTE CLERK reads it.

THE LOZANO AMENDMENT IS REJECTED

THE SPEAKER. All in favor of the amendment say *aye*. (A minority: Aye.) All against, say *no*. (A majority: No.) Rejected.

AMENDMENT BY MORALES (L.)

SR. MORALES (L.). Mr. Speaker, I propose the following amendment: Insert after section 1 the fol-

lowing words: "and in this case the exemption shall not be for more than one year."

THE SPEAKER. What does the Committee say?

SR. GENEROSO. The Committee does not accept the amendment.

THE SPEAKER. The Representative for Tarlac has the floor.

SR. MORALES (L.) ARGUES IN FAVOR OF HIS AMENDMENT

SR. MORALES (L.). The purpose of the amendment is to be in agreement with the statements of the sponsor of the Bill. He says that for the moment the foreign firms established in the Philippines will be unable to comply with the provisions of this Act; but I believe that in a year after their establishment in the Philippines, those firms would have the means to get other employees to keep their books in the official or legal language, if there is really a desire to comply with the law. If no time limit is given within which those firms must comply with the law, many firms here in the Philippines would be continuously and permanently exempt from compliance with its provisions, not because they would be unable to comply with them, but because they would take advantage of the exception made by the proposed proviso in order to avoid compliance with them. Moreover, it would probably be necessary to create a new division in the office of the Secretary of Finance in order to keep track of certain companies or commercial firms establishing themselves in the Philippines, as it would be necessary not only to keep a record of the corporations unable to keep their books as required by law; but also to know which are

the companies that do not comply with the law. Mr. Speaker, I insist upon my amendment.

SR. GENEROSO. The Committee holds that in view of the power granted to the Secretary of Finance, it is deemed superfluous to designate the time at present.

THE SPEAKER. Is the House ready to vote on the amendment?

THE HOUSE. Yes.

THE SPEAKER. Read the amendment.

THE MINUTE CLERK reads it.

THE SPEAKER. Those in favor of the amendment say *aye*. (A minority: Aye.) Those against say *no*. (A majority: No., The amendment is rejected. May the Bill proceed to a third reading?

THE HOUSE. Yes.

THE SPEAKER. Read the title of the Bill.

THE MINUTE CLERK, reading: "AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.

PASSAGE OF HOUSE BILL NO. 658

THE SPEAKER. Those in favor of the Bill say *aye*.

THE HOUSE. Aye.

The Speaker. Those against, say *no*.

(*Silence.*) Passed.

* * *

Exhibit "L"

Petitioners.

HOUSE OF REPRESENTATIVES

MANILA

August 3, 1923.

I hereby certify that the attached pages 3, 4, 5, 15, 16, 19, 25, 26, 27, 28, 29, 45, 46, 47, 48, and 49, of the Journal for November 12, 1921, are a true copy of the original on file in the office of the Secretary of the House.

FELICIANO GOMEZ,
Secretary, House of Representatives.

KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION," POSTPONING THE DATE ON WHICH SAID ACT SHALL TAKE EFFECT UNTIL JANUARY FIRST, NINETEEN HUNDRED AND TWENTY-THREE.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Section three of Act Numbered Twenty-nine hundred and seventy-two is hereby amended to read as follows:

SEC. 2. This Act shall take effect on its approval.

"SEC. 3. This Act shall take effect on January first, nineteen hundred and twenty-three."

Approved.

I hereby certify that the foregoing bill (S. No. 255-5th P. L.) was passed by the Senate on October 31, 1921.

(Sgd.) FERNANDO MA. GUERRERO,
Secretary of the Senate.

The Bill has been proposed with the following amendments:

1. Strike out lines 3 and 4 of the bill and insert in lieu thereof the following: "ART. 3. THIS ACT SHALL TAKE EFFECT ON NOVEMBER FIRST, NINETEEN HUNDRED AND TWENTY-ONE: *PROVIDED, HOWEVER*, THAT THE GOVERNOR-GENERAL MAY, BY PROCLAMATION, SUSPEND THE EFFECTS OF THIS ACT FOR A PERIOD OF TIME NOT LONGER THAN THAT COMPRISED BETWEEN NOVEMBER FIRST, NINETEEN HUNDRED AND TWENTY-ONE AND JANUARY FIRST, NINETEEN HUNDRED AND TWENTY-THREE."

2. Amend the title of the Bill to make it read as follows:

AN ACT TO AMEND SECTION THREE OF ACT NUMBERED TWENTY-NINE HUNDRED AND SEVENTY-TWO, ENTITLED "AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION," AUTHORIZING THE SUSPENSION OF THE EFFECTS OF SAID ACT.

THE SPEAKER. The Committee has the floor.

ORAL REPORT OF SR. GENEROSO, FOR THE COMMITTEE.

SR. GENEROSO. Mr. Speaker: During the last session of this Legislature and upon recommendation by the Governor-General, both Houses passed

Act No. 2972, which provides in what language the account books of merchants shall be kept. Doubts having arisen, prior to the approval of this Act, as to whether or not the same could be applied immediately, or should take effect immediately, the Legislature and the Governor-General finally agreed that the Act approved in the month of February of this year was not to take effect until November first of this year. This agreement was made because as soon as one of the Houses passed the Bill, a delegation of merchants of the Chinese community represented, in behalf of the Chinese merchants, that said Chinese merchants in the Philippine Islands would find themselves in a very difficult situation, as it would be almost impossible for them to comply with the provisions of this Act. Therefore, as I said before, the Act was passed with the provision that it was to take effect on November 1, 1921. A few days before the beginning of November of this year, the Governor-General addressed to the Legislature a communication of which I shall now read you a few of the principal paragraphs:

> "It is evident that the effects of this law might be much more harmful than beneficial to the public interest if sufficient time were not given for preparation in the case of merchants and other business men whose transactions are on a relatively small scale, especially to those established at points far distant from the centers of culture or those who, for some weighty reason, may be unable to secure in time the necessary means for complying with the law.

> "In the line of the economic development of the Philippine Islands, the trade with China and other foreign countries of the Orient and their nationals in the Archipelago dates back to prehistoric times and is now a factor of the greatest importance. As regards the future, a wise administrative policy should be adopted to insure the maintenance and further development of these valuable trade relations and this growing friendship."

This is what the Executive tells us in that communication. Very soon, about two or three days after the Executive had sent this document which we might call a message, the Senate passed its Bill No. 255. Upon the passage of this Bill and its transmittal to the House, your Committee acted, first sending for a representative of the Bureau of Internal Revenue, through the Department of Finance, in order to ascertain whether or not there were really grounds for the Committee arriving at the conclusion that under the present circumstances the Act could not be properly applied. A representative of the Bureau of Internal Revenue appeared before the Committee and stated that his Bureau was in fact of the opinion that the enforcement of the Act should be postponed, as many obstacles to its application were presenting themselves. After a careful consideration of the matter, the Committee arrived at the conclusion that a postponement of the enforcement of the Act was really necessary. The Committee understand that this postponement is necessary because this is a measure recommended by

the Governor-General, a measure of purely administrative character, and that the same Executive Power now requests the Legislature that it be given further time in order to find a way to properly enforce the Act. The Committee sees no reason why this should not be done whether or not the harm caused to the country by the suspension of the enforcement of this Act is considerable.

SR. GALLARES. Yes, sir, very considerable, because a decrease of its revenues is involved.

SR. SLAYCO. To what does it amount?

SR. GALLARES. I do not know exactly, because the agents of the Government are waiting for the enforcement of this Act in order to find it out and do not want to enforce it until action has been taken on the Bill now under discussion. But I believe that millions of pesos will be kept from the Government treasury if the enforcement of this Act is suspended.

SR. KAPUNAN ASKS A FEW PARLIAMENTARY QUESTIONS

SR. KAPUNAN. Mr. Speaker, I would like to ask the gentleman a few parliamentary questions.

THE SPEAKER. The gentleman may reply if he wishes.

SR. GALLARES. Yes, sir.

SR. KAPUNAN. Your Honor said that a suspension of the enforcement of the Act would be followed by certain evil consequences for the country, did you not?

SR. GALLARES. Yes, sir; I have already ex-

plained that to your colleague, the gentleman from Leyte, Sr. Siayngco.

SR. KAPUNAN. Very well. Does not Your Honor believe that the country would suffer still worse if the enforcement of the Act were not suspended?

SR. GALLARES. What harm would a postponement of the enforcement of this measure cause to our country?

SR. KAPUNAN. I would ask the gentleman to answer my question if he desires to do so.

SR. GALLARES. Yes, sir; I am at your disposal.

SR. KAPUNAN. Is it not true that greater harm would be done to the country if the enforcement of this Accounting Act is not suspended?

SR. GALLARES. It what does that harm consist?

SR. KAPUNAN. Is it not true that the trade in these Islands is completely in the hands of the Chinese?

SR. GALLARES. Exactly.

SR. KAPUNAN. Is it not true that the Chinese are the chief distributors of foreign goods in our country?

SR. GALLARES. I do not deny, gentleman from Leyte, that the Chinese control all the business in this country.

SR. KAPUNAN. Is it not true that if they went on a strike, we should have killed the industry and commerce of the country?

SR. GALLARES. This is what we expected, because when this Act was passed, they made this threat.

SR. KAPUNAN. Let Your Honor imagine for a moment that the merchants, not the big ones, but the small dealers, go out of business. Is it not true that we shall then have closed all the doors to distribution in the Archipelago and killed business completely?

SR. GALLARES. I don't think so. On the contrary, our trade would be stimulated by the disappearance of a powerful rival.

SR. KAPUNAN. Is it not true that in case of a strike of the Chinese, we should have completely closed the sources of revenue for the appropriations to which you have made reference?

SR. GALLARES. No, sir, it is not true; because the Filipinos would go into business and take the place of the Chinese in case of a strike.

SR. KAPUNAN. Do you believe this can be done at any given moment?

SR. GALLARES. Yes, sir.

SR. LOZANO PUTS A PARLIAMENTARY QUESTION

SR. LOZANO. Mr. Speaker, a parliamentary question of the gentleman.

THE SPEAKER. The gentleman may reply if he so desires.

SR. GALLARES. Yes, sir.

SR. LOZANO. Is it not true that that recommendation of the Governor-General to the Philippine Legislature was made after an understanding or agreement between the Council of State and the Governor-General that the enforcement of this Act be suspended?

SR. GALLARES. I do not know whether there has been an understanding between the Governor-General and the Council of State; that makes no difference to me.

SR. LOZANO. Now, that is just the explanation. I wish to remind you that this recommendation came to the Legislature after the Governor-General and the Council of State had passed a resolution suspending the enforcement of that Act.

SR. GALLARES. I know no such thing, Mr. Representative for Iloilo; I have no knowledge of that. But even if there has been such an understanding, that matters little to us, because it is not the Council of State that has to legislate for the country, but this Legislature.

SR. AGREGADO PUTS A PARLIAMENTARY QUESTION

SR. AGREGADO. Mr. Speaker, a parliamentary question of the gentleman.

THE SPEAKER. The gentleman may reply if he so desires.

SR. GALLARES. Yes, sir.

SR. AGREGADO. Is it not true that the interests of the country, which has over ten million of inhabitants,

SR. BENITEZ. I am going to answer that question now, in the course of my peroration.

(Continuing) When the Legislature passed Act 2972, in which it was provided that said Act was not to take effect until November 1, 1921, it did so under the supposition that certain foreign

merchants in this country would be unable to comply immediately with that Act if the same took effect on its approval. Now comes the Executive and tell us...

SR. RECTO PUTS OTHER PARLIAMENTARY QUESTIONS

SR. RECTO. Mr. Speaker, some more parliamentary questions of the gentleman.

THE SPEAKER. The gentleman may reply if he so desires.

SR. BENITEZ. Yes, sir.

SR. RECTO. Does your Honor know the reason for which the Governor-General said that the Chinese merchants would have been unable to comply with the Act if the same had been enforced on November first?

SR. BENITEZ. I do not know whether the facts with which he is acquainted are the same which I had in mind upon rising to defend this Bill, because I know of certain facts which in my personal opinion...

SR. RECTO. Well, I am asking about those facts that you know.

SR. BENITEZ. Do you desire to know them?

SR. RECTO. Yes, sir.

SR. BENITEZ. I was just about to state them when Your Honor interferred me with your question.

(Continuing). As we have seen, Mr. Speaker, the original Bill passed by this House contained a proviso empowering the Secretary of Finance to

promulgate the necessary rules and regulations for the enforcement of this Act. Unfortunately, this proviso was omitted in the Senate and the Act was passed as it now stands.

SR. LOZANO. An explanation.

SR. BENITEZ. Yes, sir, after my speech.

(Continuing). Now, Mr. Speaker, the Executive says that compliance with this Act is impossible. Should we allow an Act the provisions of which cannot possibly be carried out, to take effect, or would it be better to suspend the enforcement of that Act and give the Executive an opportunity to consider the necessary means of enforcing this Act within the time which the Bill now under consideration gives him? Mr. Speaker, in the course of the investigation made by the Committee, we have seen that, according to the statements of the Government officials, the Bureau of Internal Revenue has not been able to draft any regulation for the enforcement of this Act, because as stated by the Internal Revenue agent who is now, I believe, assistant director of that Bureau, it was not the obligation of that Bureau to promulgate regulations, nor was that Bureau empowered to do so. This is what Mr. Posadas answered when I asked him whether the Government had promulgated regulations for the enforcement of the Act.

Mr. Speaker, it has been said by the gentleman from Bohol that the public treasury would greatly suffer by a suspension of the enforcement of this Act. While it is true that the purpose of this Act is precisely that of enabling the Government to

collect more money from the merchants in the Philippines, yet the Government would lose more if it permitted this Act to take effect without being able to enforce it, than if it authorized the suspension of its enforcement by the Governor-General. What should we get out of those foreign merchants whom this Act compels to keep their books of account in English, Spanish or any of the local dialects, if we permitted this Act to take effect without the Executive being able to enforce it, for the lack of the necessary regulations necessarily required by an Act of this nature?

Mr. Speaker, this is not the first time in the history of the Philippine Legislature that an Act is amended or that the Governor-General is authorized to enforce or suspend its provisions. Our empowering the Governor-General to suspend the enforcement of Act No. 2972 does not establish a bad precedent, either. The worst would be if this Legislature, knowing that this Act cannot be enforced in any way by the Executive, according to his own statement, insisted upon this Act taking effect in this country. Such an attitude on the part of this Legislature would, indeed, establish a bad precedent. The case of the Chinese of Sulu which has been cited here does not really prove that this Act is enforceable, but shows exactly the contrary, because if of the thousands of Chinese merchants we have in this country, only those living in the capital of Sulu have been able to comply with this Act, it is clearly seen that the others are not complying with the provisions of this Act, that they are unable

to comply with them. Mr. Speaker, the Council of State has been mentioned in this question. I understand that the Council of State has not had any hand in the recommendation made by the Executive to the Legislature and if the Council of State has not suspended the enforcement of this Act, it is because it has no authority to do so, because it would have been an usurpation of powers on the part of the Council of State to decree the suspension of the enforcement of this Act or recommend such suspension to the Executive.

But the Council of State, aware of its duties and powers, has taken no action in this matter, and the Governor-General, in submitting his recommendation to this Legislature, has not done anything but recognize that the superior authority, the power to legislate on the interests of the people, is not vested in the Executive, but in the Legislative Department of the Government. The adoption of a recommendation of the Executive is not a submission to him. A government organized as our government is now organized, with three coordinate and equal departments, is a protection to the interests of the inhabitants of this country. Since the Executive himself tells us that it is not possible to enforce this Act, we should be remiss in our duty, not towards the Executive, but towards the people, if we were to insist upon Act No. 2972 taking effect. In view of all this, Mr. Speaker, I ask that the Bill pass with the amendment proposed by the Committee on Revision of Laws.

OTHER PARLIAMENTARY QUESTIONS BY SR. RECTO

SR. RECTO. Mr. Speaker, some more parliamentary questions of the gentleman.

THE SPEAKER. The gentleman may reply if he so desires.

SR. BENITEZ. Yes, sir.

SR. RECTO. Very well; I now ask Your Honor who would have to comply with the provisions of this Act, the merchants or the Bureau of Internal Revenue?

SR. BENITEZ. The merchants will be obliged to keep their books in the language provided for in this Act; but the Bureau of Internal Revenue or other office of the Government will have to enforce this Act.

SR. RECTO. Is it not true that the only thing the Bureau of Internal Revenue has to do is to see that this Act is complied with and whether or not the merchants subject to its provisions comply with the same?

SR. BENITEZ. Yes, sir.

SR. RECTO. Why, then, has Your Honor said that the Governor-General recommends the postponement of this Act for the reason that the Bureau of Internal Revenue cannot comply with the Act?

SR. BENITEZ. Because the Chief Executive has seen, after an investigation he has made, that the provisions of this Act cannot be complied with.

SR. RECTO. Does Your Honor believe that a Bureau as efficient as that of Internal Revenue has

not yet been able to get ready for the enforcement of such a simple Act, which was passed in the month of February of this year, when the date of its taking effect was transferred to the month of November?

SR. BENITEZ. There is no branch of the Government specifically charged by law with the enforcement of this Act, and the Bureau of Internal Revenue would only be obliged to do its part, that of examining the books; and according to the Bureau mentioned, there are only two books subject to the supervision of that Bureau for the purpose of tax collection.

SR. RECTO. Does Your Honor believe that for the proper enforcement of the laws it is necessary for any dependency of the government to state its opinion as to whether it can enforce the law?

SR. BENITEZ. I think so, sir.

SR. EVANGELISTA (D.) The Accounting Act and the Mining Law have all been recommended by the Executive with imposition and threats (cries of no, no!). Yes, gentlemen, I affirm it, and I take advantage of this opportunity to raise a voice of protest against such procedure. It seems to demonstrate that the boasted independence of the powers is a dead letter. Why are we not allowed to enact, repeal and amend laws in accordance with the best interest of our country, seeing that, after all, nobody knows our needs better than we ourselves?

Mr. Speaker and Gentlemen of the House, let the Legislature work alone and independently, because it feels that it has attained to majority. I have spoken.

THE SPEAKER. The gentleman from Cebu has the floor.

ADDRESS IN FAVOR, BY SR. CUENCO

SR. CUENCO. Mr. President: The speech of the Representative of Iloilo has moved me. He has shown ability in appealing to sentiment and reminding us of what is dearest and most precious to man: dignity and honor. The oration of the Representative of Iloilo reminds us that when the occasion requires an act of greatness, the mind must not waver, the convictions must strengthen, the will must not give way to cowardice and selfishness. Mr. Speaker, I agree with this point of view of the gentleman from Iloilo. However, allow me to state that this cry of alarm is not necessary. The Filipino popular representatives have never bowed to imposition by any body. This House, born of the Revolution, these men, who have taken up the work of those who, armed with sticks and bolos, faced an enemy whom his arms and elements of combat rendered formidable, cannot blunder. How can we blunder, Gentleman from Iloilo, how can we be afraid of the Chinese and General Wood, seeing that we were never afraid amidst the deluge of shot and shell of the American canons? Does the Representative of Iloilo forget that the greatest glory, the finest letters of nobility of this House are the golden pages of the journal recording, for the example and edification of posterity, the outright refusal of the Philippine Assembly to comply with the wishes of the

Commission, which insisted upon sending to Washington, as resident commissioner, a man who did not enjoy popular confidence? Has the Representative of Iloilo forgotten that this House preferred incurring the wrath of the sovereign to sanctioning by its vote appropriations which it considered in excess of the taxpaying capacity of the country? The Filipino race still has its old virility and power. Their products are the great characters, the men of strong and iron will, who will not brook imposition or tyranny of any kind.

No; we do not obey any pressure in passing this Bill. The Chinese Chamber of Commerce has asked for the total repeal of the Accounting Act. The Chinese Chamber of Commerce has not asked for the suspension of this Act, but has gone further; it has demanded the total and complete repeal of that Act. The Committee has rejected this demand of the Chinese Chamber of Commerce; but, having come to the conclusion that the enforcement of this Act is impracticable in many parts of the Archipelago, it has considered it but an act of justice, a duty imposed by conscience, to recommend to the House the passage of this Bill as amended by the Committee, empowering the Governor-General to suspend the enforcement of the Accounting Act until January first, 1923. An Act, in order to be just, must not only be in accordance with the eternal principles of justice and equity, but must also be in accordance with the peculiar circumstances of the community for which it is enacted. There are at present 15,000 Chinese merchants, and these require 18,000 men

trained in the keeping of books of account, and we have now not even one-half of those men. The representative of the Bureau of Internal Revenue has himself stated to the Committee that in Mindanao and other distant parts of the Archipelago, the Chinese, though they be willing, cannot find competent men to keep their books of account in English, Spanish or a local dialect.

The gentleman from Cebu has said that the Chinese, instead of going to this Legislature, have petitioned Washington. I recognize, Mr. Speaker, and I wish it to appear of record and desire the Chinese to know, that in doing so, they have committed a highly impolite act. But, Mr. Speaker, we must not only consider the mistake which the Chinese may have made. We must not lose sight of the secular cooperation which we have received from them in the development of our economic activities. Before the Philippines were opened to the world's commerce, they already maintained commercial relations with the Chinese. The lapse of time, far from diminishing these relations, has strengthened them more and more, to such an extent that at present, over one-half of our foreign trade is in the hands of the Chinese. The Chinese have never boasted of their power. They have never considered themselves superior to the Filipinos, and unlike certain other foreigners who, upon acquiring a controlling influence in a country, have done away with its independence, the Chinese, even though the gentlemen from Iloilo may maintain the contrary, have submitted without mental reservation to all constituted

government in the Philippines. The Chinese, in marrying Filipino women, have given our race love of work, thrift, frugality, and sobriety, free from everything artificial and showy. We cannot be implacable towards anybody, especially not towards our friends and neighbors. If the Accounting Law has defects, why insist upon its immediate enforcement, and aggrieve an element which, because of the long time that it has been living in our midst and the cooperation which it has given us, is deserving of our benevolence and consideration?

Mr. Speaker, a life of isolation is an impossibility. No people can be sufficient unto itself, and the Filipino people, who aspire to independence, cannot, like Robinson Crusoe, live alone on the lonely isle of selfishness and self-conceit.

Mr. Speaker, when the City of Tarifa was besieged by the Moors, the latter, made desperate by the resistance of the Christians, intimated to Guzman el Bueno, the chieftain of the Christians, that if he did not surrender the city instantly, they would put his son to death. Guzman then threw his own knife over the top of the wall of the redoubt from which he was watching the movements of the sons of the desert and said: "Kill him if you will; I prefer honor without a son to a son without honor." I invite the gentleman from Iloilo, I invite those who are opposed to this Bill, to vote with the Committee, in the security that in doing so, they will preserve inviolate the privileges of this House and will not deviate from the standard of chivalry set by the valiant defender of Tarifa.

But, Mr. Speaker, there is no intention of deserting, of quitting the field of honor. No; the intention is merely to find some means of making the enforcement of this Act practicable and just. This House would not be faithful to its brilliant record if it insisted upon the enforcement of a law compliance with which is at present impossible. I have spoken.

GALLARES MOTION FOR ADJOURNMENT

SR. GALLARES. Mr. Speaker, in view of the late hour, I move that we adjourn and that the debate on the Bill be continued on Monday, November 14, 1923.

PREVIOUS QUESTION

SR. GENEROSO. Mr. Speaker, I amend the motion of the gentleman from Bohol and move the previous question on the Bill and its amendments.

SR. RECTO. Mr. Speaker, I understand that many gentlemen desire to speak, as many have registered requests.

SR. AGREGADO. Mr. Speaker, I ask that I be reserved a turn to speak against the Bill.

SR. RECTO. Mr. Speaker, it seems there are numerous members who have announced their desire to speak against the proposition, and I do not know whether we shall get through by three or four o'clock. Moreover, may one know why it is desired to close the debate of this Bill?

RECESS

THE SPEAKER. I declare a recess of a few minutes.

It was 12:12 p. m.

THE SESSION RESUMED

The session was resumed at 12:21 p. m.

THE SPEAKER. There are two motions pending: one for adjournment, by the gentleman from Bohol, Sr. Gallares, and the other on the previous question moved by the gentleman for Manila, Sr. Generoso. The matter of the adjourn.

Exhibit "M" petitioners

Peking.
Dated April 28, 1921.
Rec'd. 11:15 a. m.

Secretary of State,
Washington, D. C.
169, April 28, 5 p. m.

Chinese Foreign Office vigorously protests Philippine's municipal authority requiring all bookkeeping in English, Spanish or Philippine dialect. Commercial attache' and Legation fear great indignation aroused by this legislation and that immediate results thereof may prejudice American-Chinese commercial and friendly relations. Text by mail.

CRANE.
J. M. WOOLFOLK,
Assistant Secretary of the
Governor-General.

Exhibit "N" petitioners

WAR DEPARTMENT
BUREAU OF INSULAR AFFAIRS
Washington

July 14, 1922.

General Leonard Wood,
Governor General of the Philippine Islands,
Manila, P. I.

My dear General:

The legislature has postponed the date on which the bookkeeping law, which was the subject of correspondence last year, is to go into effect. This, however, has not prevented correspondence through the Chinese Legation and through commercial bodies who feel that the law is an imposition on their Chinese customers in the Islands.

We are of the opinion here that the law is fundamentally unwise. The object of it is apparent, and any reasonable measures to prevent frauds on the revenue collections are not open to criticism. It is felt, however, that frauds may be committed in any language, and while keeping books in Chinese, or other foreign languages, is an inconvenience to the tax collector, this inconvenience is greatly overbalanced by that of the merchant having his books kept in a language which he does not understand. A reciprocal provision in China would meet our serious protest.

These arguments, of course, are familiar to you, and I am desirous simply of having you understand that the Secretary and those of us who have studied

the matter here feel that it would be a great relief if the law were definitely repealed.

We understand that the law did not originate with Filipinos. It was first recommended by an American collector of internal revenue and subsequently by an American governor general. This, however, does not prevent the public from looking on it as a Filipino legislative act and as an indication of the sort of act which the Philippine legislature might enact in dealing with foreigners.

I believe, therefore, that the legislature, in order to put itself right, should repeal this act.

With kind regards, I am

Very sincerely,

(Sgd.) FRANK MCINTYRE,
Chief of Bureau.

A true copy of record on file in this office:

(Sgd.) J. M. WOOLFOLK,
Assistant Secretary
to the Governor-General.

Manila, Aug. 14, 1923.

Exhibit "O" Petitioners

CABLEGRAM

RECEIVED

Office of the Governor-General
of the Philippine Islands
Manila

Washington, October 10, 1922.

No. 228.
Wood,
Manila.

Referring to letter from your office August 2nd and letter from Bureau of Insular Affairs dated July 14th, bookkeeping law, Secretary of War is strongly of the opinion that legislature should repeal law at coming session as it accomplishes little and is obstructive of good understanding with our neighbors.

McINTYRE.

A true copy of record on
file in this office.

J. M. WOOLFOLK,
Assistant Secretary
to the Governor-General.

Exhibit "P" Petitioners

SIXTY-SEVENTH CONGRESS

Andrew J. Volstead, Minn., Chairman.
George S. Graham, P. A.
L. C. Dyer, Mo.
Joseph Walsh, Mass.
C. Frank Reavis, Nebr.
David G. Classon, Wis.
W. D. Boies, Iowa.
Charles A. Christopherson, S. Dak.
Richard Yates, Ill.
Wells Goodykoontz, W. Va.
Ira G. Hersey, Me.
Walter M. Chandler, N. Y.
Israel M. Foster, Ohio.
Earl C. Michener, Mich.
Andrew J. Hickey, Ind.

Robert Y. Thomas, Jr.
Hatton W. Summers, Tex.
Andrew J. Montague, Va.
James W. Wise, Ga.
John N. Tillman, Ark.
Fred H. Dominick, S. C.
W. C. Preus, Clerk
W. N. Streeter, Assistant Clerk.

HOUSE OF REPRESENTATIVES U. S.
COMMITTEE ON THE JUDICIARY
WASHINGTON, D. C.

August 16, 1921.

Major General Leonard Wood,
United States Army,
Manila, Philippine Islands.

My dear General Wood:

Your attention has no doubt been called to a recent law passed by the Philippine Legislature and known as the "Bookkeeping Law." It is numbered as No. 2972.

The members of the Insular Affairs Committee of the House of Representatives recently sent a letter to the President of the Senate and the Speaker of the House of the Philippine Legislature, regarding this law. We felt that the Philippine Legislature, itself, should repeal the law or amend it, so it would not discriminate against the Chinese merchants doing business there. Of course, if the Philippine Legislature refuses to do this, then Congress will act in the matter.

I thought I would bring this to your attention,

with the hope that you might see the justice of the complaint made by the Chinese merchants and help to have this wrong righted.

Not only did the House of Representatives Committee on Insular Affairs pledge their support in behalf of the Chinese merchants, but the Senate Committee on Insular Affairs authorized Senator New, Chairman, to take similar action. The inclosed photos at letter, the original of which was sent to the Philippine Legislature, is for your information.

I will be very glad indeed if you will see what can be done about this matter and let me hear from you.

Chinese merchants were established in the Philippines before the arrival of the Spaniards in 1520, and today are as much a part of the Islands as the hills and valleys. There are about 15,000.

Chinese business houses throughout the Islands, representing over $200,000,000 invested. Chinese merchants carry on from 70 to 80% of the commercial life of the Islands, and, therefore, pay from 70 to 80% of the government tax on business. Chinese merchants introduced commercial business in the Islands, have ever since carried on the largest share of it, bringing untold benefits to Filipinos, and always maintaining a most friendly relationship with them. To destroy them is to wreck commercial business there, and one of the most essential functions of the life of the Philippine Islands. The Chinese in the Philippine Islands are loyal and public spirited; many of them fought with the Fili-

pinos against the Spaniards in the revolutionary days, and all of them purchased generously during the Liberty Bond campaigns.

The Chinese merchants are partial to American goods, handling them in preference to those of all foreign countrjes. Today, 90% of all American goods sold in the Islands is handled by these Chinese merchants. A blow at these merchants is a special blow at American goods. Likewise, the Chinese merchants are the principal buyers of Philippine products, and an injury to these merchants is an injury to the Philippine market.

The recent law passed by the Philippine legislature requiring merchants to keep their books of account in English, Spanish or a native dialect, and providing heavy penalties for the violation thereof, will affect principally the Chinese merchants. It is class legislation against them. They cannot comply with it. Unless repealed, it means their ruin, and the crippling of the life of the Philippine Islands.

The Chinese of the world who have been and are the tried and loyal friends of America and of the Philippine Islands, ask this law's repeal. They ask it in justice to the Chinese of the Philippines, in justice to the Chinese of the world, in justice to free government and fair government, everywhere.

With best wishes, I beg to remain

Very truly yours,

(Sgd.) L. C. DYER.

SIXTY-SEVENTH CONGRESS

Horace M. Towner, Iowa, Chairman,
Charles E. Fuller, Ill.
James P. Glynn, Conn.
John I. Nolan, Calif.
Frederick Zihlman, Md.
Harold Knutson, Minn.
Louis W. Fairfield, Ind.
John C. Kleczka, Wis.
Edgar R. Kiess, Pa.
Frank Murphy, Ohio.
Edgar C. Ellis, Mo.
Herbert W. Taylor, N. J.
L. M. Gensman, Okla.
Carroll L. Beedy, Me.
Finis J. Garrett, Tenn.
Christopher D. Sullivan, N. Y.
Benjamin G. Humphreys, Miss.
R. Walton Moore, Va.
William B. Bowling, Ala.
Hallett S. Ward, N. C.
W. Turner Logan, S. C.
Felix Cordova Davila, Porto Rico

H. E. Morrison, Clerk.

COMMITTEE ON INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
WASHINGTON

July 13, 1921.

Honorable Manuel L. Quezon,
President of the Senate,

Honorable Sergio Osmeña,
Speaker of the House of Representatives,
Manila, Philippine Islands.

Dear Sirs:

Members of the House of Congress, especially of the Committee on Insular Affairs, including the Chairman, have been requested by numerous persons interested in the commercial enterprises and business of the Philippine Islands, and especially of the Chinese merchants doing business there, to take some action regarding the law recently passed by the Philippine Legislature requiring the books of account of merchants and their business enterprises to be kept in English, Spanish or native dialect.

Feeling as we do that the American Congress ought to hesitate before taking any action that would in the least interfere with the local determination of your bodies as to what was best for the Islands, we have informed these gentlemen that we prefer that your legislative bodies should correct the matter. Nevertheless, we are constrained to suggest to you a reconsideration of the action taken, as we understand it, during the last part of the last session. It would appear that such action is regarded, whatever may be its merits, by those interested and affected by it, as very injurious, and in some cases absolutely destructive of their business. However, a reconsideration of the action which has been taken will bring to light fully the situation and you can then better determine what

would be the fair and just course to pursue without any action on our part.

With entire respect and consideration for your honorable bodies, and for the people whom you represent, we are

Sincerely and respectfully yours,

(Sgd.) E. M. TOWNER,
(Sgd.) EDGAR C. ELLIS,
L. C. DYER,
illegible
FRANK MURPHY,
JOHN C. KLECZKA,
LOUIS W. FAIRFIELD,
RHALTON MORRE,
HAROLD KNUTSON,
JOHN C. KIECZKA,
illegible
H. S. WARD,
HERBERT W. TAYLOR,
CARROLL L. BEEDY,
CHRISTOPHER D. SULLIVAN,
FINIS J. GARRETT,
W. B. BOWLING,
JAMES P. GLYNN,
CHARLES E. FULLER,
W. TURNER LOGAN,
EDGAR R. KIESS,
B. G. HUMPHREYS,
F. H. SCOD.

We, the undersigned, join the Members of the Insular Affairs Committee of the House, in the

above letter to the President of the Senate and the Speaker of the House of Representatives of the Philippine Legislature.

GEORGE M. YOUNG	2nd North Dakota
I. P. McPHERSON	15 Dist. Missouri
F. C. WILLSPAUGH	1st Dist. Missouri
J. C. McLAUGHLIN	9th Michigan
JAS. T. BEGY	13th Ohio
RICHARD E. BRID	8th Kansas
(Illegible)	6th Pennsylvania
ALBERT H. VESTOL	8th Indiana
F. C. HICKS	1st N. Y.
A. H. WAEIRRS	Pemiar at large
S. A. SHEETAN	16 Mo.
W. O. ATKISON	6th M. Dist.
S. LAZARO	7 L. La. Dist.
S. BENLEAN	4th Indiana
Names	Districts
(Illegible)	4th Illinois
(Illegible)	10th N. C.
S. J. YILLDS	9th Ky.
PAEICKED KEELY	6th Michigan
G. W. EWARDS	4th Prura
MUNILL MOORES	7th Indiana
HULUR F. FISHER	10th Tennessee
(Illegible)	.....
JNO. M. ROSE	19th Penn.
J. J. WANISHFIELD	9th Texas
WILL R. WOOD	10 Sud.
JOHN C. McKINYRE	13th Sees.
JOHN KISSEL	3rd N. Y.
M. A. McTANGHLINE	4th Nebr.

A. J. HICKEY	13th Indiana
(Illegible)	16th Penn.
J. A. ELSTON	6th Calif.
BEIJAIMS L.ROSEVBLOOM	1st Mda.
(Illegible)	.....
JAMES S. PAXLSUR	29th N. Y.
(Illegible)	.....
H. J. SEAIS	4th Florida
J. M. ROBSION	11th Dist. of Ky.
ENGINE BLOCK	1st Dist. of Texas
(Illegible)	5th Dist. of La.
ALLIEN W. BARKELLY	1st Dist. Ky.
(Illegible)	25th N. Y.
C. C. KEARNS	6th Okl.
J. N. TINCHER	7th Kansas
A. D. KAINS	39th N. Y.
(Illegible)	.....
E. E. DENISON	25th Illinois
FRED. B. GEMERD	13th Pa.
JOHN JACOB RGEIS	5th Mass.
ALBERT M. JOFFERIS	2nd Nebraska
KOY O. WOODRUFF	10th Mich.
(Illegible)	5th Dist. Kansas
JAMILTON FISH, Jr.	26th Dist. N. Y.
S. D. FESS	7th Ohio
(Illegible)	32nd Dist. N. Y.
JOHN Q. PILSON	3rd Dist. Coim.
J. G. CAMION	18th Ill.
(Illegible)	13th Me.
(Illegible)	15th Ill.
(Illegible)	3rd Oregon
JAMES W. DUNBAS	3rd Ind. Dist.

THOMAS L. BLANTON	17th Texas Dist.
JOHN C. KETCHAM	4th Mich.
CUM. H. RADILIFFS	7th N. J.
(Illegible)	7th Dist. of Pa.
C. A. NIOTON	10th Ms. Dist.
CHARLES G. BOND	8th N. Y.
FREDERICK K.LEHLBACH	10th N. J.
JOHN L. CABLE	4 Ohio
JAMES F. BYRNES	2nd S. C.
N. J. SINNOTT	2nd Or.
ED. D. HOYS	14th Mo.
A. J. VOLSTEATH	7th Minn.
C. ELLIS MOORE	15th Ohio
ROY G. QUITZGERD	3rd Ohio
(Illegible)	2nd Iowa
(Illegible)	.....
JOHN REBER	12th Dist. Penn.
HARRY M. WURZBACH	14 Dist. Texas
A. P. NELSON	11th Wisconsin
ELLIOTT W. SPRONL	3th Ill.
Names	Districts
SAMIL S. ARENTH	Nevada
B. MTON E. SWEET	3rd Iowa Dist.
RICH. YATES	Illinois
(Illegible)	.....
RICHARD N. ELLIOTT	Indiana 6th
J. C. PINGOY	Ohio 17th
WM. M. MORGAN	.....
ALICE M. ROBENTSON	2nd Oklahoma
(Illegible)	22 N. Y.
H. J. LAWSCENCE	3rd Mo. Dist.
(Illegible)	4th Mo. Dist.

Exhibit "2"

BUREAU OF INTERNAL REVENUE

Manila

June 30, 1923.

TO WHOM IT MAY CONCERN:

This is to certify that the following statement is the result of the canvass made by Supervising Agents of this Office of Chinese merchants keeping different kinds of accounting books all over the Philippine Islands:

STATISTICS SHOWING THE NUMBER AND PERCENTAGE OF CHINESE MERCHANTS WHO KEEP DIFFERENT BOOKS OF ACCOUNTS

Provinces	No. of Chinese keeping only B. I. R. Sales Book	Percentage	No. of Chinese keeping Chinese Accounting book besides BIR Sales Book	Percentage	No of Chinese keeping only Chinese Book	Percentage	Remarks
Abra	11	92	1	8	0	..	
Albay (ex. Cat.)	91	32	196	68	0	..	
Antique	...	..	...	..	...	..	No rpt. rec'd.
Bataan	...	..	...	..	...	..	No rpt. rec'd.
Batanes	...	..	...	..	...	..	No rpt. rec'd.
Batangas	11	14	67	86	...	..	
Bohol	12	16	61	64	...	..	
Bulacan (10 T. only)	29	56	23	44	...	..	
Cagayan	79	30	187	70	1	..	
Camarines Norte	31	24	97	76	...	..	
Camarines Sur	...	..	...	..	...	..	No rpt. rec'd.
Capiz	15	20	60	80	...	..	
Cavite	24	36	43	64	...	..	
Cebu	106	18	297	51	182	31	
Ilocos Norte	27	53	24	47	...	..	
Ilocos Sur	82	67	41	33	...	..	
Iloilo	...	..	...	..	...	..	No rpt. rec'd.
Isabela	53	28	139	72	...	..	
Laguna	155	40	226	60	3	..	
La Union	8	18	37	82	1	..	
Leyte (46 towns)	79	8	870	92	...	..	
Marinduque	2	3	61	97	...	..	
Masbate	...	..	...	..	...	..	No rpt. rec'd.
Mindoro	10	28	26	72	...	..	
Misamis	57	21	168	60	53	19	
Nueva Ecija	27	14	172	86	...	..	
Occidental Negros	...	..	...	..	...	..	No rpt. rec'd.
Oriental Negros	...	..	127	78	36	22	
Palawan	...	..	...	..	...	..	No rpt. rec'd.
Pampanga	27	26	78	74	...	..	
Pangasinan	8	3	225	93	9	4	
Rizal	195	73	73	27	...	..	
Romblon	7	18	33	82	...	..	
Samar (36 towns)	26	6	407	94	...	..	
Sorsogon	...	..	...	..	...	..	No rpt. rec'd.
Surigao	14	10	122	90	...	..	
Tarlac	2	2	126	98	...	..	
Tayabas	94	24	298	76	1	..	
Zambales	51	44	64	56	...	..	
Agusan (1)	...	..	...	..	...	..	No rpt. rec'd.
Bukidnon	2	23	4	67	...	..	
Cotabato	...	..	...	..	...	..	No rpt. rec'd.
Davao	...	..	...	..	...	..	No rpt. rec'd.
Lanao	12	38	20	62	...	..	
Sulu	...	..	...	..	...	..	No rpt. rec'd.
Zamboanga (part)	...	..	24	100	...	..	
Mountain	4	14	24	86	...	..	
Nueva Vizcaya	...	..	...	..	...	..	
Total	1,351	22	4,424	73	285	5	
City of Manila	838	36	927	40	540	24	
GRAND TOTAL	2,189	26	5,351	64	825	10	

(1) List of the so called Non-Christian Provinces begins on this line.

JUAN POSADAS, Jr.,
Acting Collector of Internal Revenue.

(Illegible) 9th Mo. Dist.
JOHN McDUFFIE 1st Ala.

Exhibit "Q"

December 18, 1923.

MEMORANDUM

relative to a portion of the
personnel of the Bureau of Internal Revenue:

The records show that at the end of October, 1923, the following permanent positions were vacant:

1 Clerk at ₱600—Law Division
1 Messenger at ₱420—Accounting Division
1 Agent's Assistant at ₱960—Inspection Division
1 Clerk at ₱600—Inspection Division

Other vacant position during the month of October, 1923:

1 Chief of Division at ₱5,500—Income Tax Division
1 Clerk at ₱600—Law Division
1 Clerk at ₱480—Income Tax Division
1 Clerk at ₱480—Accounting Division
1 Agent's Assistant at ₱1,320—Inspection Division
1 Agent's Assistant at ₱720—Inspection Division
1 Agent's Assistant at ₱960—Inspection Division
1 Agent's Assistant at ₱960—Inspection Division
1 Clerk at ₱600—Inspection Division
1 Clerk at ₱480—Inspection Division
1 Clerk at ₱600—Inspection Division

At the end of November, 1923, the positions vacant were:

1 Clerk at ₱600 per annum—Inspection Division

1 Agent's Assistant at ₱2,000 per annum—Inspection Division

Other vacant positions during the month of November, 1923:

1 Chief of Division at ₱5,500—Income Tax Division

1 Agent's Assistant at ₱2,000—Inspection Division

1 Clerk at ₱600—Law Division

1 Messenger at ₱420—Accounting Division

1 Clerk at ₱480—Accounting Division

FIELD PERSONNEL AND CHINESE ACCOUNTANTS PROVIDED IN THE APPROPRIATION LAW FOR THE YEARS 1919-20-21-22 and 23.

Yrs.	Agent	Accountant	Inc. Tax Exam.	Agt's Asst.	Asst. Exam.	Chinese Acct'ts.	Drug Insp.	Total
1919	20	—	13	58	—	5	2	98
1920	20	—	13	60	—	3	2	98
1921	18	—	13	60	—	3	2	96
1922	24	1	15	68	10	5	2	125
1922	24	—	17	68	10	5	2	126

NOTE: Discretionery Fund from which spies and other secret agents who also are designated as Chinese Accountants are paid ₱5,000 yearly.

A. L. YATCO,
Chief Administrative Division
Bureau of Int. Revenue.

Exhibit "3"

BUREAU OF INTERNAL REVENUE
MANILA

June 30, 1923.

TO WHOM IT MAY CONCERN:

This is to certify that, according to the records of this Office, the following indorsement has been sent to the Secretary to the Governor-General on September 22, 1921:

"2nd Indorsement

"Sept. 22, 1921.

"Respectfully returned to the Secretary to the Governor-General, Manila.

"During the year 1920, Internal Revenue tax receipts were issued to 95,363 merchants and manufacturers, 183 printers and publishers, 10,424 common carriers, 10,967 contractors and warehousemen, 58,942 peddlers of merchandise and 1,001 brokers. All of the above mentioned persons are required to pay percentage taxes on their gross sales or receipts. On account of the nature of this tax, these persons are required to keep books of accounts wherein they can enter the amounts of business done by them.

"This Bureau has no statistics to show the number of Chinese engaged in different businesses subject to percentage taxes but it is safe to say that they represent fully sixty per cent of the numbers stated above. All of these Chinese merchants keep their accounts in Chinese, with the exception of very few large business houses which keep two sets of books of accounts, one in Chinese and the other in Spanish. There are also other business men who do

not keep their books of accounts either in English or Spanish. These are Germans, Japanese, Syrians and Hindus. Their number cannot be ascertained due to the lack of statistics but there are many of them in the Islands, especially the Japanese.

"The Bureau of Internal Revenue has up to this time employed 17 Chinese accountants, two Hindus and one Japanese. All of these accountans have been separated from the service with the exception of four Chinese accountants who are at present still employed in the Bureau. Out of the seventeen Chinese accountants employed, five were discharged for graft, seven resigned or were forced to resign for either unsatisfactory services rendered or for suspicion of graft, and one deceased. In spite of this number of accountants employed, only very little number of Chinese books have been investigated and audited, and in the majority of them under declarations of sales or receipts have been found.

"There are also a number of Chinese who are not subject to percentage taxes, but who have books of accounts that need to be audited for income-tax purposes.

"It can be seen from the foregoing statements that the law requiring merchants to keep their books in English, Spanish or in any of the local dialects, is necessary in order to protect the revenues of the Government.

"(Sgd.) W. TRINIDAD,
"Collector of Internal Revenue."

JUAN POSADAS, Jr.,
Acting Collector of Internal Revenue.

Exhibit "4"

March 2, 1923.

The City Fiscal,

Manila, P. I.

Sir:

I have the honor to inform you that Yu Cong Eng, a Chinese merchant doing business at 696 Juan Luna, Manila, has violated the provisions of section 1 of Act No. 2972 of the Philippine Legislature which went into effect on January 1 of the present calendar year, penalized under section 2 of the same Act, by keeping his books of account from January 1, to February 27, 1923, in Chinese and not in English, Spanish or any native dialect as required by law.

It is therefore requested that the above-named offender be prosecuted as in your opinion such act is warranted by the circumstances of the case.

You are informed that Internal Revenue Agent Juan Evaristo, and Chinese Accountant Sy Siangco, of this Office, or any other internal-revenue officer or agent of this city will render you any necessary assistance in the investigation and prosecution of this case.

It is further requested that this Office be kept advised from time to time as to the status of this case as indicated by Circular No. 82-A of the Attorney-General.

Two books of account kept by the above-named offender in violation of the provisions of Act No.

2972, are presently deposited in this Office and will be forwarded to you upon request.

Very respectfully,

W. TRINIDAD,
Collector of Internal Revenue.

B-
Note: Please accomplish inclosed
BIR Form No. 566 and return.
Copy for Internal Revenue Agent Juan Evaristo,
Manila, P. I.

A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

Exhibit "5"

March 5, 1923.

The City Fiscal,
Manila, P. I.

Sir:

I have the honor to inform you that Chan Bon Chong, a Chinese merchant doing business at 203 Nueva, Manila, has violated the provisions of section 1 of Act No. 2972, penalized under section 2 of the same Act, by keeping his books of account from January 1, to March 3, 1923, in Chinese and not in English, Spanish or any local dialect as required by law.

It is therefore requested that the above-named offender be prosecuted if in your opinion such action is warranted by the circumstances of the case.

You are informed that Juan Evaristo, Chief of

the Secret Service force of this Bureau, or any other internal-revenue officer or agent in this city, will render you any necessary assistance in the investigation and prosecution of this case.

It is further requested that this Office be kept advised from time to time as to the status of this case as indicated by Circular No. 82-A of the Attorney-General.

Very respectfully,

W. TRINIDAD,
Collector of Internal Revenue.

BY JUAN POSADAS, JR.,
Deputy Collector of Internal Revenue.

B-
Note: Please accomplish inclosed
BIR Form No. 568 and return.
Copy for:
The Chief, Secret Service,
Bur. of Int. Revenue, Manila.
A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

Exhibit "6-A"

November 7, 1923.

The Director of Education,
Manila, P. I.

Sir:

In connection with a case of prohibition now pending before the Honorable Supreme Court

wherein the Collector of Internal Revenue, the City Fiscal and Judge Pedro Concepcion of the Court of First Instance of Manila are the respondents, I have the honor to request that you furnish this Office with information as to the following:

1. The total number of graduates from the Manila School of Commerce since its establishment;

2. The number of intermediate and high schools all over the Islands and if there is record, the total number of graduates therefrom;

3. Up to what part of arithmetic is taught in the intermediate and high schools, and

4. The name of the person in your Bureau qualified to testify as to the above facts.

An early attention hereto will be highly appreciated.

Very respectfully,

(Sgd.) E. P. REVILLA,
City Fiscal.

A true copy.

Exhibit "6-B"

MEMORANDUM

BUREAU OF EDUCATION

Manila, November 10, 1923.

	Boys	*Girls*	*Total*
1. Total number of graduates from the Philippine School of Commerce, Manila, since its establishment:			
Two-year in Bookkeeping Course	308	17	325
Two-year in Stenography	240	71	311

One-year Special course (High Sch. Graduates)	70	12	82
Bookkeeping & Stenography (Commercial Course)	31	1	32
Total	649	101	750
Total number of graduates in the night school, Philippine School of Commerce, Manila, since its establishment:			
Bookkeeping Course	172	4	176
Stenographic Course	66	13	79
Total	238	17,255(a)	
Grand Total	887	118	1,005

(a) Night school graduates for the school year 1918-19 are not included because no data available.

	Intermediate	*Secondary*
2. Total number of intermediate and high schools all over the Islands, July, 1923	989	86
Total number of graduates since the American occupation	134,946	12,613

A true copy.

Exhibit "6-C"

BRIEF:—Manila, Nov. 7, 1923. City Fiscal requests certain statistical and other information.

1st Indorsement
BUREAU OF EDUCATION
Manila, November 12, 1923

Respectfully returned to the City Fiscal, Manila, P. I. The information requested in Nos. 1 and 2,

is given in the attached memorandum. The information for Nos. 3 and 4, follows:

3.—The present intermediate course in Arithmetic covers thru the four fundamental processes, fractions, decimals, percentage and applications; practical measurements; ratio and simple proportion, common business and governmental transactions; and powers and roots. In the high school, Review Arithmetic is prescribed for the second semester of the third year. This course offers advanced work in the operations studied in the intermediate grades.

4.—Mr. Benito Leuterio.

(Sgd.) LUTHER B. BEWLEY,
Director of Education.

A TRUE COPY:

Exhibit "6-D and 6-E"
BUREAU OF EDUCATION
Manila

Number of graduates since the school was established

School Year	Bookeeping		Stenography		H. S. G. Stenography		Commerce	
	Male	Female	Male	Female	Male	Female	Male	Female
1906-1907 to 1911-1912	23		19		..		2	
1912-1913	15	1	6	4	5	1	4	..
1913-1914	26	..	11	2	1	2	6	..
1914-1915	20	1	17	8	4	..	1	..
1915-1916	28	1	20	4	5	1	..	..
1916-1917	31	2	16	2	2	..	..	..
1917-1918	38	2	32	10	7	..	..	..
1918-1919	11	..	15	..	9	1	..	..
1919-1920	17	4	26	7	13	..	..	..
1920-1921	29	1	19	10	10	4	..	..
1921-1922	33	2	37	16	6	1	7	..
1922-1923	37	3	22	8	8	2	11	1
Total	308	17	240	71	70	12	31	1

NIGHT DEPARTMENT

1917-1918	23	..	6	..
1918-1919	Not Available			
1919-1920	18	..	14	3
1920-1921	26	..	26	6
1921-1922	50	3	9	2
1922-1923	55	1	11	2
Total	172	4	66	13

November 12, 1923

Exhibit "7-A"

November 10, 1923.

Mr. Alfonso Felix,
Assistant Fiscal,
City of Manila.
Dear Fiscal:

In connection with the letter of our Bureau dated November 2, 1923, transmitting the statement prepared by our Chief Examiner showing the number of persons who passed the bookkeeper, junior bookkeeper, first, second and third grade examinations held since the organization of this Bureau in 1901, please substitute such statement with the new one herewith inclosed which is more complete than the one previously submitted.

Sincerely yours,

M. GONZALEZ,
Chief Clerk.

Inclosure.

Exhibit "7-B"

CIVIL SERVICE ARITHMETIC

The arithmetic given in the bookkeeper examination is the same as first grade arithmetic and that

given in the junior bookkeeper is second grade

First grade arithmetic involves a knowledge of the four fundamental rules, common and decimal fractions, weights and measures, percentage and their business application, such as interest, discount, commission, custom house business, stocks and bonds, partnership, etc.

Second grade arithmetic embraces addition, subtraction, multiplication and division of whole numbers, common and decimal fractions, the ordinary weights and measures and simple percentage.

Third grade arithmetic embraces addition, subtraction, multiplication and division of whole numbers and of Philippine money.

Sample problems are given in the Civil Service Manual of Information.

CERTIFIED CORRECT:

(Sgd.) A. DEL ROSARIO,
Chief Examiner.

Manila, March 13, 1924.

Exhibit "7-C"

NUMBER OF PERSONS WHO PASSED THE FOLLOWING EXAMINATIONS DURING THE PERIOD 1901-1922 INCLUSIVE

YEAR	BOOKKEEPER			JR. BOOKKEEPER			FIRST GRADE			SECOND GRADE			THIRD GRADE			
	Eng.	Spa.	Total	Eng.	Spa.	Total	Eng.	Spa.	Total	Eng.	Spa.	Total	Eng.	Spa.	Total	
(a)																
1901	1	1	2	...	...	....	74	12	86	137	133	270	9	137	146	504
2	19	...	19	...	...	....	261	33	294	212	255	467	.....	317	317	1097
3	4	...	4	...	...	....	262	20	282	247	471	718	.....	614	614	1618
4	8	...	8	...	...	....	195	14	209	177	599	776	12	385	397	1390
5	6	...	6	...	...	....	232	23	255	280	577	857	167	696	863	1981
6	9	2	11	...	...	....	139	15	154	183	354	537	195	334	529	1231
7	3	...	3	...	...	....	128	8	136	266	268	534	214	297	511	1184
8	4	1	5	...	...	....	118	9	127	466	289	755	471	357	828	1715
9	7	...	7	...	...	....	80	5	85	258	79	337	383	165	548	977
10	6	...	6	...	...	....	119	6	125	428	100	528	538	200	738	1397
11	11	...	11	...	...	....	107	4	111	456	58	514	450	136	586	1222
12	3	1	4	...	...	....	72	1	73	590	43	633	847	116	963	1673
13	3	...	3	...	...	....	76	...	76	603	30	633	900	125	1025	1737
(b)																
14	...	...	....	12	...	12	34	1	35	539	74	613	575	89	664	1324
15	3	...	3	10	...	10	25	3	28	703	53	756	956	165	1121	1918
16	1	...	1	7	...	7	33	1	34	709	71	780	1107	150	1257	2079
(c)																
17	7	...	7	28	...	28	70	10	80	704	62	766	500	27	527	1408
18	4	...	4	26	...	26	91	1	92	611	50	661	1048	....	1048	1831
19	1	...	1	24	...	24	119	1	120	830	20	850	518	....	518	1513
20	4	...	4	28	...	28	157	3	160	909	62	971	535	1	536	1699
21	5	...	5	24	...	24	87	3	90	624	19	643	386	....	385	1148
22	14	...	14	50	...	50	342	...	342	432	20	452	578	....	578	1436
TOTAL	123	5	128	209	...	209	2821	173	2994	10364	3687	14051	10389	4311	14700	32082

(a) First Grade English was called clerk in 1901.
Second Grade English was called junior clerk in 1901.
Third Grade English was called under clerk in 1901.
First Grade Spanish was called oficial 3.o in 1901.
Second Grade Spanish was called oficial 4.o in 1901.
Third Grade Spanish was called Escribiente in 1901.
(b) Junior bookkeeper not given before 1914.
(c) Third grade Spanish not given after 1917 except in special cases.

Certified Correct:

A. DEL ROSARIO
Chief Examiner

Exhibit 8 are statistics of the Superintendent of Schools of the City of Manila.

Exhibit 9-A to 9-J is a pamphlet issued by the *Jose Rizal College* wherein several letters from American Universities are published.

Exhibit 9-K is a pamphlet of the *North Western University School of Commerce*, Chicago, Ill.

Exhibit 10

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF FINANCE AND JUSTICE
BUREAU OF INTERNAL REVENUE
MANILA

February 3rd, 1913.

SUBJECT:—Business done and capital employed, in the Philippine Islands by Filipinos and foreigners.

To all Municipal Treasurers:

This Office has been requested by the Executive Secretary to be furnished with the least possible delay the following information:

The total number of wholesale merchants of each nationality, the total number of retail merchants of each nationality, and the total amount of C-1 taxes paid by merchants of each nationality, also the total amount of taxes paid by C-2 license holders of each nationality, the amount of capital employed by C-2 license holders of each nationality, the number of operatives of each nationality employed by holders of C-2 licenses, and the total number of C-2 license issued to persons of each nationality, during the

calendar year 1912, in each municipality of the Philippine Islands.

There is forwarded with this letter to each municipal treasurer a blank form to be used by him in furnishing this information. This form should be filled in so as to show the information desired for each nationality. In order to avoid delay this letter and form are sent direct to each municipal treasurer. Copies are also sent to each provincial treasurer.

Municipal treasurers at the provincial capitals should forward their statements when completed to this Office, through the Provincial Treasurer. Municipal treasurers at other than provincial capitals should return their statements when completed direct to this Office in order to avoid delay.

It is requested that this matter receive immediate attention.

Very respectfully,

WM. T. NOLTING,
Collector of Internal Revenue.

Copy forwarded to all provincial treasurers, internal revenue agents, and assistants with true copy of the enclosed form.

(Sgd.) JUAN POSADAS, Jr.,
Acting Collector of Internal Revenue.

Exhibit 11 is a letter of John Rieder of the Office of the Bureau of Internal Revenue re Cole Yam, dated May 19, 1919.

Exhibit "12"

March 20, 1924.

The Secretary to the Governor-General
Manila.

Sir:

I have the honor to request that the following cable message be sent to the Chief, Bureau of Insular Affairs, Washington, D. C.:

> "Please secure copies of all Canadian sales tax laws, for the Bureau of Internal Revenue of the Philippine Islands."

Verry respectfully,

JUAN POSADAS, JR.,
Collector of Internal Revenue.

A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

DEPARTAMENT OF STATE
WASHINGTON

April 3, 1924.

In reply refer to
Co.—105 P. I./296

The Secretary of State presents his compliments to the Honorable the Secretary of War, and has the honor to acknowledge his note of March 24, 1924,

requesting that copies of all Canadian Sales Tax laws be procured for the use of the Bureau of Internal Revenue of the Philippine Islands.

The American Consul at Ottawa, Ontario, has accordingly been instructed to endeavor to procure copies of the laws desired by the Governor-General of the Philippine Islands.

War Department, B. I. A., April 22, 1924—Copy to the Governor-General of the Philippine Islands.

1st Indorsement

OFFICE OF THE GOVERNOR-GENERAL
OF THE PHILIPPINE ISLANDS

Manila, May 26, 1924.

Respectfully referred, through the Honorable, the Secretary of Finance, to the Collector of Internal Revenue.

(Sgd.) J. M. WOOLFOLK,
Assistant Secretary
to the Governor-General.

A true copy:
JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

AMERICAN CONSULATE GENERAL
OTTAWA — CANADA

April 17, 1924.

SUBJECT: *Forwarding copies of Canadian Sales Tax Laws:*

The Honorable,
The Secretary of State,
Washington.

Sir:

In response to Department instruction dated April 3, 1924, (File No. 105. P. I. / 296) I have procured from the Department of Customs & Excise, in duplicate, copies of all the Canadian Sales Tax Laws now in force, for the use of the Bureau of Internal Revenue of the Philippine Islands.

These copies have been furnished by the Canadian Government without charge.

I have the honor to be, Sir,

Your obedient servant,

JOHN G. FOSTER,
Consul General.

Enclosures:

Canadian Sales Tax Laws.

620.

A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

DEPARTMENT OF STATE
WASHINGTON

April 23, 1924.

In reply refer to
Co—105. P. I. /301

The Secretary of State presents his compliments to the Honorable the Secretary of War and has the honor to refer to his note of March 24, 1924, requesting that copies of all Canadian Sales Tax Laws be procured for the use of the Bureau of Internal Revenue of the Philippine Islands.

There are enclosed copies of all the Canadian Sales Tax Laws now in force.

Enclosures:

Copy of a dispatch of April 17, 1924,
with enclosures, from Ottawa.

War Department, Bureau of Insular Affairs, Washington, D. C., May 2, 1924.—Copy to the Governor-General of the Philippine Islands, Manila, P. I., reference being had to cable from his office of March 22, 1924.

Incls. Sales Tax Laws.

Cablegram Received.

OFFICE OF THE GOVERNOR-GENERAL
OF THE PHILIPPINE ISLANDS
MANILA

No. 645 Washington, May 2, 1924.

Wood, Manila.

Referring to telegram from your office March 22nd, Canadian sales tax laws mailed today.

McIntyre.

Copy for:
Collector of Internal Revenue,
Secretary of Finance.

Manila, May 3, 1924.

A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF FINANCE
MANILA

2nd Indorsement

May 27, 1924.

Respectfully transmitted to the Collector of Internal Revenue, for his information.

(Sgd.) MIGUEL UNSON,
Acting Secretary of Finance.

A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

OFFICE OF THE GOVERNOR-GENERAL
OF THE PHILIPPINE ISLANDS

1st Indorsement

Manila, June 13, 1924.

Respectfully referred, through the Honorable, the Secretary of Finance, to the Collector of Internal Revenue, Manila.

(Sgd.) J. M. WOOLFOLK,
Assistant Secretary to the Gov.-General.

DEPARTMENT OF FINANCE
MANILA

2nd Indorsement

June 16, 1924.

Respectfully transmitted to the Collector of Internal Revenue.

(Sgd.) MIGUEL UNSON,
Acting Secretary of Finance.

A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

July 9, 1924.

The City Fiscal,
Manila.
Sir:

I have the honor to enclose herewith, for use in

connection with the Bookkeeping Law Case, copies of all the Canadian Sales Tax Laws now in force.

Please acknowledge receipt of the same.

Very respectfully,

JUAN POSADAS, Jr.,
Collector of Internal Revenue.

Incls:

A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF THE INTERIOR
CITY OF MANILA
LAW DEPARTMENT

July 11, 1924.

Sir:

This is to acknowledge receipt of your communication of the 9th instant together with copies of all the Canadian Sales Tax Laws now in force in Canada.

Very respectfully,

(Sgd.) GUILLERMO B. GUEVARA,
City Fiscal.

The Collector of Internal Revenue,
Manila.

A true copy:

JOSE M. HILARIO,
Chief, Administrative Division,
Bureau of Internal Revenue.

Exhibits "12-a to 12-e"

CERTIFICATE

I hereby certify that the attached copies are true and exact copies of the articles of the Codes of Commerce of Columbia, Bolivia, San Salvador, Argentina, Venezuela and Ecuador, as published in the pages of volumes, indicated immediately after each citation, of the work, THE COMMERCIAL LAWS OF THE WORLD, a set of which is found in this Library.

Manila, January 2, 1924.

(Sgd.) T. H. PARDO DE TAVERA,
Director, Philippine Library and Museum.

COLOMBIA

CODE OF COMMERCIAL LAW

(Sanctioned 12 Oct., 1896 and adopted by law 57 of 1887.)

* * * *

FIRST BOOK. OF TRADERS AND COMMERCIAL AGENTS.

* * * *

SECOND TITLE. THE OBLIGATIONS OF TRADERS.

* * * *

SECOND CHAPTER. OF MERCANTILE KEEPING OF ACCOUNTS

27. Every wholesale merchant is legally bound to keep at least four books for his accounts and correspondence, that is to say: 1. The day-book;—2.

The ledger of current accounts;—3. The book containing lists of assets and liabilities and balance sheet; and 4. Copying letter-book, of which the following chapter treats.

28. Retail traders are bound to keep two books or memoranda, that is to say, one for current accounts, in which they enter their daily operations, and the other for lists of assets and liabilities, with balance sheet, in which their position is set forth at least every two years.

A retail trader is a person who sells directly to consumers the things in which he deals.

29. The merchant may keep, outside the prescribed books, other auxiliary ones which are usual in commerce, and which he may consider necessary to afford information as to his operation.

30. A merchant who for any reason is not able himself to keep his book, must depute another person to carry out his system of bookkeeping, under the responsibility of the owner, without prejudice to the liability of the actual bookkeeper in cases of fraud or culpable negligence.

31. The books set forth in the three first paragraphs of art. 27 must be bound, ruled and paged; their leaves must be indorsed in red by the commercial Judge and by his registrar; and in the first of them must be placed a memorandum dated and signed by both, showing the total number of leaves and the person to whom the book belongs. At the end of each year the same officials must indorse in red the last entry in the day-book.

In the district where no Tribunal of Commerce

exists, these formalities will be fulfilled by the Judge of the department or of the district, and their respective registrars.

32. *The books must be written in the dialect of the district. The trader who keeps them otherwise will incur a fine of 20 to 200 pesos; he will have to pay the cost of translation, when it should be necessary to produce them in a judicial proceeding, and in no case will he be able to advance them as evidence in his own favor.*

* * * *

(The Commercial Laws of the World, vol. II—Colombia, pages 26, 27, 30 and 31.)

BOLIVIA

BOOK I. PRELIMINARY PROVISIONS.

TITLE I. THE PRINCIPAL ACTORS IN COMMERCE AND THEIR OBLIGATIONS.

* * * *

CHAPTER IV. COMMERCIAL BOOKS.

32. All traders shall be bound to keep four commercial books: 1. A day-book;—2. A ledger or book of current account;—3. A book of inventories;—4. A copy-letter book.

* * * *

42. The entries in the aforesaid commercial books *shall be made in Spanish, under a fine of fifty to three hundred bolivianos on a person making them in another language, besides his being bound to translate them at his own expense.*

* * * *

(The Commercial Laws of the World, vol. V.—Bolivia, pages 11, 14 and 15.)

SAN SALVADOR
COMMERCIAL CODE
(5 July 1904.)

* * * *

FIRST BOOK. TRADERS AND COMMERCIAL AGENTS.

TITLE II. COMMERCIAL BOOKKEEPING.

18. Traders shall of necessity keep: 1. A book of inventories and balance sheets;—2. A day-book; —3. A ledger, and 4. A book with copies of letters and telegrams.

Association and companies shall also keep a minute book, wherein they shall set out all the directorates concerning the operations of the association.

19. All the books mentioned in the preceding article, with the exception of the copy-book of letters and telegrams, *must be kept in the Spanish language, under a fine of from fifty to one hundred pesos in the event of infringement.*

In case of production in court, books written in a foreign language shall be translated by an interpreter appointed officially and at the expense of their owner, without prejudice to payment of the fine.

* * * *

(The Commercial Laws of the World, vol. X. —San Salvador, pages 86, 87 and 88.)

ARGENTINA

COMMERCIAL CODE.

* * * *

SECOND TITLE. OBLIGATIONS COMMON TO ALL MERCHANTS.

* * * *

THIRD CHAPTER. COMMERCIAL BOOKS.

43. Every merchant is bound to keep books of account and of his mercantile correspondence.

The number and forms of those books are entirely at the discretion of the merchant, provided that he is regular and that he keeps the books which the law designates as indispensable.

44. The books which a merchant is bound to keep are the following: 1. Day-book;—2. Stock-book;—3. Copy-letter book.

* * * *

66. Commercial books, to be admitted in an action, *must be kept in the language of this country.* If they are in a different language through belonging to foreign men of business, is material, by an interpreter officially appointed.

* * * *

(The Commercial Laws of the World, vol. I.—Argentina, pages 34, 62, 64 and 69.)

VENEZUELA

COMMERCIAL CODE.

* * * *

FIRST BOOK. OF COMMERCE IN GENERAL.

TITLE I. OF TRADERS

* * * *

SECTION II. OF THE OBLIGATIONS OF TRADERS.

* * * *

S 3. Of commercial bookkeeping.

35. Every wholesale trader must keep for his commercial accountability, at least three books bound, leaved, and written-up in the Spanish language, which, are: The Day-Book;—The Ledger;—The Stock-book.

* * * *

(The Commercial Laws of the World, vol. III.—Venezuela, pages 58, 60, 61 and 62.)

ECUADOR

COMMERCIAL CODE

* * * *

BOOK I. OF MERCHANTS AND COMMERCIAL AGENTS.

TITLE L. OF MERCHANTS

* * * *

SECTION II. OF THE OBLIGATIONS OF MERCHANTS.

* * * *

S 3. Of commercial bookkeeping.

35. Every wholesale merchant must keep, for

his commercial bookkeeping, at least four books, bound, covered and paged, namely: day book, ledger, inventory book, and cash book.

These books must be kept in the Spanish language.

* * * *

(The Commercial Laws of the World, vol. III.—Ecuador, pages 8, 9, 12 and 14.)

CERTIFICATE

I hereby certify that the copies attached hereto are correct and exact copies of the articles of the Codes of Commerce of Mexico, Honduras, Guatemala, France and Servia, as published in volume III of the "Códigos de Comercio" by Manzano, Bonilla and Miñana, kept in this Library.

Manila, January 2, 1924.

T. H. PARDO DE TAVERA,
Director of the Philippine Library and Museum.

MEXICO

CODE OF COMMERCE OF SEPTEMBER 15, 1899

(Official Edition of 1906)

BOOK I

TITLE II

Obligations common to all persons engaged in commerce.

CHAPTER III

Mercantile Bookkeeping

ART. 33. Every merchant shall enter all his transactions in at least three books, to wit, the book of

inventories and balances, the general day-book and the ledger or book of current accounts.

Partnerships and stock companies must also keep a minute book or books, wherein a minute shall be made of all resolutions, relative to the company's operation and transactions, adopted by the stockholders at their general meetings, and the councils of administration.

ART. 34. Those books required as absolutely necessary in mercantile bookkeeping shall be bound, covered, folioed and sealed with the corresponding seal in the manner provided by the statutes.

ART. 35. Merchants may keep their books personally or through another person whom they may authorize to do so.

If the merchant does not keep the book himself, the person keeping them shall be presumed to have proper authority until the contrary is shown.

ART. 36. Merchants must keep their books in the Spanish language, with clearness, in the progressive order of dates and transactions, and without leaving any blank, and said books must not in any way be altered. Any error that may be committed therein shall be corrected by a new entry connected with the wrong one.

ART. 37. Any merchant, even if he be a foreigner, who does not keep his books in Spanish, shall be fined in not less than fifty, nor more that three hundred pesos; a Spanish translation shall be made, at his expense, of the entries in the book, required to be examined and verified, and he shall be compelled, in the manner provided by law, to translate into said

language all such books as he may have kept in another, within the period that may be allowed him.

("Códigos de Comercio" by Manzano, Bonilla and Miñana, volume III, pages 205-206.)

HONDURAS

CODE OF COMMERCE OF SEPTEMBER 15, 1898

BOOK I

Merchants and Commercial Agents.

TITLE II

Obligations of Merchants.

CHAPTER II

Mercantile Bookkeeping

ART. 25. Merchants must necessarily keep:

1. A book of inventories and balances.
2. A day-book.
3. A ledger.
4. A copy-book for letters and telegrams.

Partnerships and companies must also keep a minute book or books wherein a minute shall be made of all the resolutions relative to the operation and transactions of the company, adopted by the stockholders at their general meetings, and by the councils of administration.

ART. 26. The books must be kept in the Spanish language under penalty of a fine of from 100 to 500 pesos for each violation.

In cases of judicial exhibition, the books written in a foreign language shall be translated at the ex-

pense of the owner by an interpreter appointed *de officio*, without prejudice to the payment of the fine.

("Códigos de Comercio" by Manzano, Bonilla and Miñana, volume III, page 255.)

GUATEMALA

CODE OF COMMERCE OF JULY 20, 1877

BOOK I

Merchants and Commercial Agents

TITLE I

Classification of Merchants

CHAPTER II

Mercantile Bookkeeping

ART. 20. Every merchant shall keep, for his accounting and correspondence, the following books: 1st, a day-book; 2nd, a ledger or book of current accounts; 3rd, a book of inventories and balances; 4th a copy-book for letters.

ART. 21. The books of account must be kept in the Spanish language.

("Códigos de Comercio" by Manzano, Bonilla and Miñana, volume III, page 247.)

FRANCE

CODE OF COMMERCE OF 1807, MODIFIED BY SUBSEQUENT LAWS

BOOK I

Commerce in general.

TITLE II

Books of Commerce.

* * * *

ART. 11. The books to be kept, according to articles 8 and 9, shall be numbered, signed and examined either by one of the judges of the mercantile courts, or by the mayor or his assistant, in the ordinary manner and without expense. Every merchant shall preserve these books for ten years (1).

ART. 12. The books of commerce regularly kept are admissible in court as evidence between merchants on acts of commerce.

ART. 13. If the books, that persons engaged in commerce are under obligation to keep, do not meet the requirements above prescribed, they cannot be presented nor considered as evidence in courts, in favor of those to whom they belong; without prejudice to the provisions of Book III, on bankruptcy and insolvency.

(Note 1.) The books of merchants must be written in the French language (Decr. 2 prair. year II; L. 24 prair. year XI).

("Códigos de Comercio" by Manzano, Bonilla and Miñana, volume III, pages 165-166).

SERVIA

MERCANTILE LAW ON MERCHANTS OF JANUARY 26 (FEBRUARY 6), 1860

CHAPTER II

BOOKS OF COMMERCE

ART. 8. Every merchant must keep a day-book wherein he shall state day by day and month by month all his purchases, sales, incomes and expenses, to whom money was paid, or from whom it was received, and, in general, everything that he may have received or spent for whatever account. He shall also express in these books the amounts employed in his household expenses.

ART. 9. Every merchant must also keep books wherein he shall copy all the letters he may receive in connection with his mercantile business, and must carefully preserve all the letters he may have received in that regard.

ART. 10. Besides the obligations prescribed in the preceding articles, every merchant shall have the duty to make yearly an inventory of his personal and real properties, stating the persons to whom they shall be delivered, or from whom the same were received. This inventory shall be copied every year in a book to be used for the purpose.

ART. 11. All the books must be kept in the Servian language, clean, with no sheet in blank, and without dirt, erasures or interlineations.

Before using the books in which the day-book and the inventory must be copied, they shall be paged,

presented to the court, signed by the judge, and sealed with his seal which shall stand as their certificate.

ART. 12. Books kept in due manner are admissible as evidence in courts; those not kept as required shall not have this effect, nor those which have given rise to any complaint, even if the ground of the same shall not have been upheld. Neither shall the books of a merchant, convicted by the courts of *estafa* or any other crime of fraudulent bankruptcy, be admitted as evidence.

ART. 13. Books of foreign merchants kept in accordance with the laws of their respective countries shall be admitted as evidence in the Servian courts whenever the books of the Servian merchants kept in accordance with this law are given the same consideration in the countries of said foreign merchants.

("Códigos de Comercio," by Manzano, Bonilla and Miñana, volume III, pages 290-291.)

URUGUAY

CODE OF COMMERCE OF JANUARY 24, 1866

BOOK I

Persons in commerce.

* * * *

TITLE II

Obligations common to all persons engaged in commerce.

CHAPTER I

General Provisions.

ART. 44. Those engaged in commerce are, for that very reason, under obligation to comply with all the

requirements and formalities prescribed by the Mercantile Law.

Among these requisites, are the following:

1. The registration in the public registry of documents required by the law to be registered.

2. The obligation to adopt a uniform system of bookkeeping in the Spanish language and to have the books necessary for the purpose.

3. The preservation of such correspondence as may have any connection with the business of the merchant, as well as of all the books kept by him.

4. The obligation to render account in the manner provided by the law.

"Códigos de Comercio," by Manzano, Bonilla and Miñana, volume II, page 259.)

I hereby certify that the foregoing is a correct copy of article 44 of the Code of Commerce of Uruguay, as inserted in page 259, volume II, of the "Codigos de Comercio" by Manzano, Bonilla and Miñana, kept in this Library.

Manila, January 2, 1924.

T. H. PARDO DE TAVERA,
Director of the Philippine Library and Museum.

ALCOHOL LAW OF CHILE

TITLE II

BOOKKEEPING

ART. 32. Every manufacturer of alcohol must

keep in Spanish the following books, bound, folioed and signed by the respective fiscal inspector:

1. A day-book wherein each and every material employed in the manufacture of alcohol shall be stated.

2. A day-book wherein the production and sale of manufactured alcohol shall be entered.

3. The ledger, and books of balances and correspondence required by article 25 of the Code of Commerce.

Agricultural distilleries shall keep the books mentioned in subsections 1 and 2.

* * * *

TITLE IV

PENALTIES

ART. 64. A penalty of sixty days' imprisonment, commutable with a fine of from fifty to three hundred pesos, shall be imposed upon those who violate the obligations or prohibitions provided in the preceding articles, except in cases where a special penalty is provided.

* * * *

ART. 70. The penalty of imprisonment cannot be commuted with fine but in those cases expressly excepted.

He who cannot pay the fine shall suffer one day of imprisonment for each five pesos he may fail to pay.

I hereby certify that the foregoing is a correct copy of articles 32 and 70 of the Alcohol Law of

Chile, as inserted in pages 58, 61 and 62, respectively, of Appendix XV to "INSTITUCIONES POLITICAS Y JURIDICAS" by Vicente Romero y Giron, which is kept in the Library of this high court.

Manila, December 28, 1923.

(Sgd.) V. ALBERT,
Clerk, Supreme Court of the P. I.

CODE OF COMMERCE OF BRAZIL

x x x

ART. 16. In order to be admissible as evidence in court, said books of commerce must be written in the language of the country; however, if they belong to foreign merchants or traders and are not written in said language, the part relative to the litigation shall first be translated by a sworn interpreter to be appointed by agreement of the parties, when there is no official and public one; the parties may in the proper case impugn the accuracy of the translation.

x x x

ART. 62. Ship brokers shall have authority to translate bills of lading and such other documents as captains or masters of foreign vessels may be under obligation to present for their dispatch in the offices of the customhouses of the country.

These translations, as well as those made by interpreters appointed by the mercantile courts, shall be given public faith, the parties interested having always the right to impugn their accuracy.

x x x

ART. 125. All kinds of mercantile documents

relative to obligations contracted in the Brazilian territory, which are not written in the language of the country, are inadmissible in mercantile litigations, except when all the contracting parties are foreigners, in which case a correct translation thereof shall be produced.

I hereby certify that the foregoing is a correct copy of articles 16, 62 and 125 of the Code of Commerce of Brazil, as inserted in pages 574, 580-581 and 586, respectively, of Appendix I to "INSTITUCIONES POLITICAS Y JURIDICAS" by Vicente Romero y Giron, kept in the Library of this high court.

Manila, December 28, 1923.

(Sgd.) V. ALBERT,
Clerk, Supreme Court of the Philippine Islands.

Exhibits 13-A to 13-KK are miscellaneous bills obtained by M. E. Riepe.

Exhibit 14 is B. I. R. 269 (Revised 2-20-23) New B. I. R. Form No. 31.37, Transcript Sheet, Official Register Book, Leaf Tobacco Received.

Exhibit 15 is B. I. R. 271, New B. I. R. Form No. 31.48, Official Guide (Leaf Tobacco).

Exhibit 16 is B. I. R. 22, New B. I. R. Form No. 31.10, Official Register Book, Manufacturing Tobacco.

Exhibit 17 is B. I. R. 23, New B. I. R. No. 31.19, Official Register Book, Cigars.

Exhibit 18 is B. I. R. New B. I. R. Form No. 31.28, Official Register Book, Cigarrettes.

Exhibit 19 is B. I. R. 282, New B. I. R. Form No. 31.02, Transcript Sheets, Official Register Book, Raw Materials Received.

Exhibit 20 is B. I. R. 283, New B. I. R. Form No. 31.05, Official Invoice.

Exhibit 21 is a form for distillers of alcohol (B. I. R. No. 368, New B. I. R. No. 2.41, Official Register Book, Denatured alcohol).

Exhibit 22 is B. I. R. 218, Official Register Book, Crude Spirits.

Exhibit 23 is B. I. R. 220, New B. I. R. Form No. 2.15, Official Register Book, Rectified Spirits.

Exhibit 24 is B. I. R. 219 (Revised March 15, 1919) Official Register Book, Compound Liquors.

Exhibit 25 is B. I. R. 330, New B. I. R. Form No. 2.21, Sales Account, Distilled Spirits.

Exhibit 26 is B. I. R. 5, New B. I. R. Form No. 2.07, Official Tax Receipt.

Exhibit 27 are forms for the wine and liquor business—B. I. R. 218, Official Register Book, Crude Spirits, B. I. R. 220, New B. I. R. Form No. 2.15, Official Register Book, Rectified Spirits; B. I. R. 219 (Revised March 15, 1919) Official Register Book, Compound Liquors; B. I. R. 330, New B. I. R. Form 2.21, Sales Account, Distilled Spirits.

Exhibit 28 is B. I. R. No. 6, Official Invoice, fermented liquors, still or sparkling wines.

Exhibit "29"

Fifth Philippine Legislature,
Second Period.

HOUSE OF REPRESENTATIVES

H. No. 658

Presented by Representative Urgello

EXPLANATORY NOTE

As the merchants doing business in the Philippines are not all of the same nationality, some of them keep their books of account in their native language. The investigation of these books by the agents of the Government for their proper verification is somewhat difficult, for in many cases it requires the assistance of a translator, which constitutes an expense to the public treasury.

Uniformity and facility in the examination and investigation of these books require that the same be kept by merchants, whether individuals or corporations, in English or Spanish.

The attached bill has this object in view.

(Sgd.) VICENTE URGELLO
Representative for the 3rd District of Cebu

Certified correct:

(Sgd.) N. PIMENTEL,
Chief Clerk, House of Representatives.

Fifth Philippine Legislature,
Second Period.

HOUSE OF REPRESENTATIVES

H. N. 658

Presented by Representative Urgello

AN ACT
TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT AND TO ESTABLISH PENALTIES FOR ITS VIOLATION

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. It shall be unlawful for any person engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing laws, to keep their books of account in a language other than English, Spanish or any local dialect: *Provided, however*, that the Secretary of Finance may make the exceptions he may deem necessary in favor of those persons who, in his judgment and after examination or investigation, are unable to comply with the provisions of this Act.

SEC. 2. Any person violating the provisions of this Act shall upon conviction be punished by a fine of not more than ten thousand pesos, or imprisonment for a period not exceeding two years, or both.

SEC. 3. This Act shall take effect on the first of July, nineteen hundred and twenty one.

Aproved.

Certified correct:

(Sgd.) N. PIMENTEL,
Chief Clerk, House of Representatives.

Fifth Philippine Legislature,
Second Period.

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE No. 146

Submitted by the Committee on Revision of Laws, December 22, 1920;

Re: Bill No. 658 of the House;

Recomending its passage without amendment.

Through: Representative Cuenco.

Mr. Speaker:

The Committee on Revision of Laws, to whom the Bill (H. No. 658—5th P. L.) of Representative Urgello, was referred, and which is entitled:

AN ACT TO REQUIRE THE MERCHANTS ESTABLISHED IN THE PHILIPPINES TO KEEP THEIR BOOKS OF ACCOUNT IN ENGLISH OR SPANISH,

has had the same under consideration, and has instructed me to return said bill to the House with the following recommendation.

THAT IT BE PASSED WITHOUT AMENDMENT.

Respectfully submitted,

(Sgd.) JOSE G. GENEROSO,
Chairman, Committee on Revision of Laws.

To the Honorable Speaker,
House of Representatives.

Certified correct:

(Sgd.) N. PIMENTEL,
Chief Clerk, House of Representatives.

I hereby certify that the foregoing Bill (H. No. 658) was passed by the Senate of the Philippines on the 8th of February, 1921, with the following amendment:

Let Section 1 be eliminated, and in lieu thereof the following inserted:

"SEC. 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, under the laws now in force, to keep their books of account in a language other than English, Spanish or any local dialect."

(Sgd.) FERNANDO Ma. GUERRERO,
Secretary of the Senate.

Certified correct:

(Sgd.) N. PIMENTEL,
Chief Clerk, House of Representatives.

Fifth Philippine Legislature,
Second Period.

REPORT OF CONFERENCE No.....

The Conference Committee on the divided votes of the two Houses, regarding the amendment of the Senate to Bill No. 658 of the House, entitled:

AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT AND TO ESTABLISH PENALTIES FOR ITS VIOLATION,

have met, and after a free and complete conference,

have agreed to recommend, as it hereby recommends, to their respective House the following:

1. That the amendment of the Senate be accepted.
2. That in Sec. 3 of the Bill the word "July" be eliminated, and instead thereof, the following inserted: "November."

Respectfully submitted,

MEMBERS OF CONFERENCE ON THE PART OF THE SENATE:

(Sgd.) PEDRO Ma. SISON,
" JOSE ALTAVAS,
" FRANCISCO SORIANO.

MEMBERS OF CONFERENCE ON THE PART OF THE HOUSE:

(Sgd.) JOSE G. GENEROSO,
" RICARDO PARAS,
" JOSE PADILLA.

Certified correct:

(Sgd.) N. PIMENTEL,
Chief Clerk, House of Representatives.

No. 658
H

Fifth Philippine Legislature,
Second Period.

(No. 2972)

AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.

Be it enacted by the Senate and House of Represent-

atives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

SEC. 2. Any person violating the provisions of this Act, shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years, or both.

SEC. 3. This Act shall take effect on November first, nineteen hundred and twenty one.

Approved, February 21, 1921.

Exhibit 30

Sixth Philippine Legislature,
First Period.

HOUSE OF REPRESENTATIVES
REPORT OF COMMITTEE No. 30

Submitted by the Committee on Revision of Laws January 22, 1923;
Re: Bills Nos. 453 and 513 of the House;
Recomending that they be laid on the table.
Through Representative Cuenco.

Mr. Speaker:

The Committee on Revision of Laws, to whom the Bills (H. No. 453—6th P. L.) of Representative Ortiz entitled:

AN ACT TO REPEAL ACT NUMBERED TWO THOUSAND NINE HUNDRED SEVENTY-TWO, AS AMENDED BY ACT NUMBERED TWO THOUSAND NINE HUNDRED NINETY-EIGHT, (Re: the language in which account books shall be kept.)

and (H. No. 514—6th P. L.) of Representative Oppus, entitled:

AN ACT TO AMEND SECTION ONE OF ACT NUMBERED TWO THOUSAND NINE HUNDRED SEVENTY-TWO, ENTITLED "AN ACT TO PROVIDE THE LANGUAGE IN WHICH ACCOUNT BOOKS SHALL BE KEPT AND TO ESTABLISH PENALTIES FOR ITS VIOLATION," BY PROVIDING THAT THE BOOKS OF ACCOUNT BE KEPT IN CERTAIN LANGUAGES AND REGISTERED, AND DECLARING THEM PUBLIC DOCUMENTS FOR THE PURPOSES OF TAXATION, AND FOR OTHER PURPOSES,

were referred, has had the same under consideration, and has instructed me to return them to the House with a report, with the following recommendation:

THAT THEY BE LAID ON THE TABLE.

Respectfully submitted,

(Sgd.) M. JESUS CUENCO,
Chairman, Committee on Revision of Laws.

To the Honorable Speaker,
House of Representatives.

Certified correct:

(Sgd.) N. PIMENTEL,
Chief Clerk, House of Representatives.

Sixth Philippine Legislature,
First Period.

HOUSE OF REPRESENTATIVES
H. No. 453
Presented by Representative Ortiz

AN ACT
TO REPEAL ACT NUMBERED TWO THOUSAND NINE HUNDRED SEVENTY-TWO, AS AMENDED BY ACT NUMBERED TWO THOUSAND NINE HUNDRED NINETY-EIGHT. (Re the language in which books of account shall be kept.)

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Act numbered two thousand nine hundred seventy-two, as amended by Act numbered two thousand nine hundred ninety-eight, is hereby repealed.

SEC. 2. This Act shall take effect on its approval.

Approved,

Certified correct:

(Sgd.) N. PIMENTEL,
Chief Clerk, House of Representatives.

Sixth Philippine Legislature,
First Session.

HOUSE OF REPRESENTATIVES

H. No. 513

Presented by Representative Oppus

AN ACT

TO AMEND SECTION ONE OF ACT NUMBERED TWENTY-NINE HUNDRED SEVENTY-TWO ENTITLED "AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION," BY PROVIDING FOR THE KEEPING OF BOOKS OF ACCOUNT IN CERTAIN LANGUAGES, THE REGISTRATION OF SUCH BOOKS AND DECLARING THE SAME PUBLIC RECORD FOR PURPOSES OF TAXATION, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Section one of Act Numbered Twenty-nine hundred seventy-two is hereby amended to read as follows:

"Section 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect: *Provided, however,* That any such person, company, partnership or corporation may keep books of account in any language other than herein prescribed, provided that he shall, before

using such books, present the same to the justice of the peace of the municipality where such person, company, partnership or corporation has commercial establishments, in order that said justice of the peace may put on the first page of each one a signed memorandum of the number of pages contained in the book and stamp his official seal on all the sheets of each book. Any book of account certified and sealed in the manner herein prescribed shall be *prima facie* evidence of the facts therein stated.

"All books of account kept by any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands shall be considered as public records for purposes of taxation, and persons keeping them and their heirs or successors shall preserve the same for a period of five years computed from the date of the last entry of transaction had, unless sooner destroyed upon permit of the Collector of Internal Revenue."

SEC. 2. This Act shall take effect on its approval.

Approved,

Exhibit 31.

PHILIPPINE LEGISLATURE
HOUSE OF REPRESENTATIVES
Manila

February 14, 1923.

Mr. Speaker:

I have the honor to inform you that at the meeting held this day by the Committee on Revision of

Laws, I have submitted the bills recommended by the Hon. Governor-General, entitled:

> "An Act to provide for the registration of account books, to declare the same public records for purposes of taxation, and to establish penalties for its violation;"
>
> and
>
> "An Act to amend section 1 of Act Numbered Twenty-nine hundred and seventy-two, entitled 'An Act to provide in what language account books shall be kept and to establish penalties for its violation,' by providing for the keeping of books of account in certain languages, the registration of such books and declaring the same public record for purposes of taxation, and for other purposes."

I have also submitted to the consideration of the Committee a copy of the communication of the Hon. Governor-General addressed to you, wherein he recommends the enactment by the Legislature of the aforesaid bills. After a careful consideration of the aforesaid bills, the Committee on Revision of Laws has unanimously resolved not to adopt the same. The Committee believes that, out of respect to the Governor-General, he must be informed of the reasons it had had for adopting said resolution.

On October 8, 1914, the Director of the Bureau of Internal Revenue, Mr. James Rafferty, issued a circular duly approved by the Hon. Victorino Mapa, Secretary of Finance and Justice, wherein, among other things, it was provided:

"2. **Records of Merchants and Manufacturers.**—Every merchant and manufacturer subject to the tax imposed by section 40 of Act No. 2339, shall keep a day book, in which he shall enter in detail in **English or Spanish** every day each of his sales that amount to ₱50.00 or more, and the daily aggregate amount of sale that are less than ₱50.00 each. Every merchant and manufacturer shall before using said book serially number its pages in a permanent and legible manner, and shall present it to an internal-revenue agent or officer for approval. Cash sales and credit sales shall be entered separately in this book within the period of twenty-four hours following the date on which same are made. If on any date no sales are made, then that fact shall be noted in the book within the said twenty-four hours under the corresponding date."

Some Chinese merchants affected by the regulations, brought a civil action in the Court of First Instance of Manila against the Director of the Bureau of Internal Revenue for the annulment of said circular. As a defense, the defendent asserted that the purpose of the regulations adopted by him was to protect the Government and to prevent the evasion of the payment of the percentage revenue tax. The case was decided in favor of the plaintiffs, the Supreme Court basing its decision on the ground that there was no law giving the Collector of In-

ternal Revenue the power to issue said circular. This, on the one hand, and the false declarations made by many Chinese merchants in their income tax returns, on the other, induced some members of the Legislature to present in different periods, in the interest of the Government, bills whose object was to require that the books of merchants be kept in English or Spanish.

One of the bills was passed by the Senate during the first period of the Fifth Philippine Legislature. When said bill was referred to the House of Representatives, the latter, in view of the exceptional scope of the bill and of the large interests to be affected, postponed its consideration in order to have time to study the same carefully and conscienciously. On account of this delay, the Honorable Governor-General in his message to the Legislature, dated October 6, 1920, revived the matter as follows:

> "The relation of the Government to private or semi-public business enterprises, either through the police power or the taxing power, requires constant attention and revision. I recommend for your consideration the following provisions to assist in an adequate development of your national business and commercial life and for the proper protection of the public.
>
> * * * * *
>
> "5. Legislation as already approved by the Senate should require that all business houses keep their books in English or in Spanish, or in any one of the local Philippine

dialects, in order to avoid wholesale frauds upon the public revenues."

As a consequence of said recommendation, the Philippine Legislature enacted Act No. 2972, commonly known as the Bookkeeping Law. The promulgation of this law disgusted the Chinese merchants who, instead of recurring to the Philippine Legislature for an amendment or repeal thereof, sent delegates to the Metropolis, where, as in the Chinese cities whereby they had passed, using an incorrect language, they not only tried to show the supposed injustice of Act No. 2972, but questioned the capacity and wisdom of the Philippine Legislature. The censurable manner in which the Chinese protested against Act No. 2972 was enough for the Philippine legislators to come to the defense of their dignity, and they refused to reconsider the action taken by them on the matter. However, prompted by their desire to consider the question according to its exclusive and real merits, the Committee on Revision of Laws of the Fifth Legislature held some public sessions in order to discuss the matter again, an invitation having been sent to the representatives of the Chinese community and their attorneys and to the Collector of Internal Revenue, the Insular Auditor and the Director of the Bureau of Commerce, so that they might attend said sessions. The Insular Auditor commissioned Mr. Guevara to represent him, the Collector of Internal Revenue was represented by his assistant Mr. Posadas, and Mr. Confesor appeared in behalf of the Bureau of Commerce. The representatives of the

Chinese community advocated the repeal of Act No. 2972; but their contention was tenaciously opposed by the representatives of the Bureau of Audits and the Bureau of Internal Revenue. Mr. Posadas repeatedly asserted before the Committee that due to the books of the Chinese merchants being unintelligible on account of the language in which they are written, the public treasury is defrauded in several millions of pesos every year; and that in order to protect the Government, it was necessary to maintain Act No. 2972. Mr. Confesor furnished the Committee with a memorandum of laws, similar to Act No. 2972, in force in various countries. After considering the arguments advanced in pro and con, the Committee resolved not to recommend any measure tending to repeal or amend the Act in its fundamental provisions. However, taking into consideration that Act No. 2972 came upon unexpectedly and the Chinese merchants were unprepared, specially those who resided in distant places of the Archipelago, who could not engage the services of the personnel necessary for the keeping of their books of account in English, Spanish or the local dialect, a bill was proposed, and that is what is now known as Act No. 2998. It must be remembered that this Act met with obstinate opposition in the House of Representatives, the opponents alleging that there was no sufficient reason why the enforcement of Act No. 2972 should be postponed.

The City of Manila, on February 25, 1919, enacted ordinance No. 532, which requires that "every person, firm or corporation in the City of Manila

engaged in laundering, dyeing, or cleaning by any process, cloths, or clothes for compensation, shall issue to the person from whom cloths or clothes to be washed, dyed, etc., are received a receipt in duplicate, in English and Spanish, duly signed, showing the kind and number of articles delivered...." One Kwong Sing, in his behalf and that of other Chinese laundry-men, petitioned the Court of First Instance of Manila to annul this ordinance on the ground that it was a class legislation, made undue discrimination between persons under similar circumstances, constituted an arbitrary invasion of property rights, and was arbitrary, unreasonable and not justified under the police power. The Supreme Court, in overruling the contention of the plaintiffs, and sustaining the validity of the ordinance, said among other things:

> "The purpose of the municipal authorities in adopting the ordinance is fairly evident. Ordinance No. 532 was enacted, it is said, to avoid disputes between laundrymen and their patron and to protect customers of laundries who are not able to decipher Chinese characters from being defrauded. The object of the ordinance was, accordingly, the promotion of peace and good order and the prevention of fraud, deceit, cheating, and imposition. The convenience of the public would also presumably be served in a community where there is a Babel of tongues by having receipts made out in the two official languages. Reasonable restraints of a lawful business for

such purposes are permissible under the police power.

"Our view, after most thoughtful consideration, is, that the ordinance invades no fundamental right, and impairs no personal privilege. Under the guise of police regulation, an attempt is not made to violate personal or property rights. The ordinance is neither discriminatory nor unreasonable in its operation. It applies to all public laundries without distinction, whether they belong to Americans, Filipinos, Chinese, or any other nationality. All, without exception, and each and everyone of them without distinction, must comply with the ordinance. There is no privilege, no discrimination, no distinction. Equally and uniformly the ordinance applies to all engaged in the laundry business, and, as nearly as may be, the same burdens are cast upon them."

The arguments advanced by the Chinese against Act No. 2972 are the same as those adduced against ordinance No. 532 of the City of Manila. Section 1 of Act No. 2972 provides:

"SECTION 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect."

Paraphrasing the language of the Supreme Court in the Kwong Sing case, we will say that the purpose of Act No. 2972 is to prevent the Government from being defrauded in the collection of taxes which are legitimately due it, and that the law in question does not violate any fundamental right, nor impair any individual privilege whatever. It is not intended to violate any personal or real right under color of police regulation; the Act is not partial nor unreasonable in its operation; it applies to all persons, companies, partnerships or corporations engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, without discrimination, whether they are Americans, Filipinos, Chinese or of whatever nationality. All, without distinction, and each and every one of them must comply with the law. It gives no privilege of any kind, nor makes any preference or distinction whatever. The law applies equally and uniformly to all persons engaged in commerce or industry.

On the other hand, Act No. 2972 finds precedents in similar and analogous laws in force in France, Columbia, Panama, Servia, Bolivia, Chile, Ecuador, Guatemala, Honduras, Mexico, Salvador, Uruguay and Rumania. The Insolvency Law, on account undoubtedly of the facility with which fraud may be committed through books written in undecipherable characters, does not discharge the insolvent debtor from his obligations, when he does not keep his books in Arabic numerals. Bills of lading arriving in the United States must be written in English,

or accompanied by a translation into that language. The bills submitted by the Honorable Governor-General virtually repeal Act No. 2972. This Act being just, and having been promulgated to prevent the Government from being defrauded annually in several millions of pesos in the internal revenue and income taxes, the Committee cannot recommend the enactment of said bills.

The Committee is aware of the articles published in the newspapers, wherein it was said that the repeal of Act No. 2972 would cause the Congress of the United States directly to intervene in the matter. The Committee is deeply convinced that the Congress of the United States will act, as it has always done, cautiously and justly; that upon learning that the Bookkeeping Law was enacted upon the recommendation of the Chief Executive in order to protect the interests of the Government, and that its provisions maintain absolute equality, it will reject the unreasonable claim of the Chinese. If, however, the Congress of the United States should unfortunately repeal or radically amend said Act, such an action would not be a dishonor to us. What would degrade us would be to yield to the demand of the Chinese, notwithstanding our honest belief that such a demand is prejudicial to the public interests.

Sincerely yours,

M. JESUS CUENCO,
Chairman, Committee on
Revision of Laws.

Hon. Manuel Roxas,
Speaker,
House of Representatives,
Manila.

Exhibit 32

I certify that the attached pages 2, 6 to 14, 17 and 18, 20 to 24 and 30 to 44 are exact copies of the contents of the journal of the House of Representatives, corresponding to November 12, 1921.

(Sgd.) N. PIMENTEL,
Chief Clerk, House of Representatives.

Representative Cecilio:

Resolution No. 3 of the assembly of municipal presidents of Camarines Sur, asking that the Customs duties on imported rice be increased. (Pet. No. 851—5th P. L.)

CHAIRMAN. Let it be referred to the Committee on Appropriation.

Resolution No. 5 of the same assembly, requesting that the fines collected in the justice of the peace courts for violation of municipal ordinances be paid into the general fund of the respective municipality. (Pet. No. 852—5th P. L.)

CHAIRMAN. Let it be referred to the Committee on Provincial and Municipal Governments.

Representative Bengson:

Resolution No. 13 of the municipal council of Sual, Pangasinan, adherring to resolution No. 25 of

the municipality of San Quintin of the same province, wherein it is requested that the salary of the municipal presidents and secretaries be increased. (Pet. No. 853—5th P. L.)

CHAIRMAN. Let it be referred to the Committee on Provincial and Municipal Governments.

COMMUNICATIONS

Telegram from the municipal president of Compostela, Cebu, stating that in an extraordinary session held by the municipal council of said municipality on November 8, 1921, with the attendance of the people, it was resolved to request the House of Representatives not to accept the renouncement by Speaker Osmeña of the leadership of the Nacionalista Party. (Com. No. 447, 5th P. L.)

CHAIRMAN. Let it be placed in the Archives.

In accordance with special order No. 35, Bill No. 255 of the Senate is in order. Let the bill be read.

POSTPONEMENT OF EFFECTIVENESS OF THE BOOKKEEPING ACT.

THE MINUTE CLERK reads:

BILL No. 255 OF THE SENATE.

(Presented by Senator Sison.)

AN ACT TO AMEND SECTION THREE OF ACT NUMBERED TWO THOUSAND NINE HUNDRED SEVENTY-TWO, ENTITLED "AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT."

MR. GALLARES. Mr. Speaker, I wish to be given a chance to speak against the bill.

MR. GENEROSO. (*Proceeding.*) So that, Mr. Speaker, last year the Governor told us: The administration wants this measure in order that the bureau in charge of the treasury shall have more facility in the collection of certain taxes. The Legislature, acceeding to this petition, adopted the measure. But now the same Executive tells us: We believe that it is necessary to fix a lower term than that fixed by the law, because the situation is such that its enforcement at present would redound to the prejudice of the Government, instead of to its benefit. We, members of the Committee, told ourselves then: If this is the state of the question, if the branch of the Government, which has more facilities and is in a position to know and appreciate whether or not the law may now be applied, tells us that a little extension of the time is necessary, why should we deny that petition? The Executive Power and the Senate, which is one of the Houses of this Legislature, have already agreed upon the extension of the period for the enforcement of this law, what could be the reason, what could be the motive of this House, for not agreeing with the upper House and for placing an obstacle to the policy of the Governor-General, by denying his petition? What can we get now by immediately enforcing compliance with the law, knowing from information from the Executive that that law cannot now be applied and that it would cause prejudice, instead of benefit? This is, gentlemen of the House, the principal point that the Com-

mittee has taken into account in submitting the report it is now submitting to you. I will be short, because I understand that several gentlemen of the House will take part in the discussion. I have said, I believe, the main point. I will now explain why the Committee adopted the amendment set forth in the report, and not the amendment passed by the Senate. The Committee believes, and is still convinced, that the law is good. It believes that the bureau in charge of the collection of certain taxes will now find it easy to become fully acquainted with the status of the businesses of all the merchants established in the Philippine Islands. The Committee is satisfied, through information from the Executive Department, that the law is good, but it is convinced, upon informations from the same Department, that at present there are inconveniences in its application. As the Executive Department is, as I have said, in a better position to know the real facts in this respect, the Committee understands that it is better, it is preferable, and more in consonance with the coordination in the functions of the various branches of the government, to confer upon the Governor-General the power to suspend the operation of the Act. The Committee is informed that the Governor-General has ordered a proper and complete investigation in connection with putting the Act into effect earlier or later, and for this reason the Committee thinks that it is better to give the Governor-General authority to suspend the operation of the Act for not longer than the period between November 1, 1921, and January

1, 1923. We rely on the sound discretion, uprightness and integrity of the Chief Executive of these Islands; and upon this reliance, we do not hesitate to tell him. As you are in a better position than we to be fully acquainted with the situation, in connection with this law, we vest you with the power to suspend the operation of this law within the period of time we have fixed. So that, once this bill is enacted into law, it will depend upon the Governor-General to postpone or not to postpone the operation of this Act No. 2972 for the period of time I have already mentioned. And if, after investigation, he thinks it advisable that this Act should not take effect until January, 1923, it will be done so undoubtedly; but if he believes that the period should be shorter, so it will also be done. I think that with this measure we have done our duty in this particular case.

MR. AGREGADO MAKES SOME PARLIAMENTARY QUESTIONS.

MR. AGREGADO. Mr. Speaker, I would like to make some parliamentary questions to the orator.

The SPEAKER. The orator may answer if he pleases.

MR. GENEROSO. Yes, sir; with much pleasure.

MR. AGREGADO. Your Honor is subscriber, I suppose, to the newspapers "El Ideal" and "La Vanguardia."

MR. GENEROSO. Yes, sir.

MR. AGREGADO. Has your Honor had occasion to read the "El Ideal" of November 10th of this year, wherein it is said that?...

The SPEAKER. I call the attention of the Chairman of the reporting Committee that it is not convenient to bring to the House outside informations.

MR. GENEROSO. I would request the gentleman from Batangas to make his question more specific.

MR. AGREGADO. Has not the orator been informed of the fact that in Sulu and other Visayan islands, this Act is already in force, because the Chinese in those places are perfectly putting into practice the provisions of this law?

MR. GENEROSO. I believe the report says that in the capital of Jolo that practice exists. I believe that that may be true, but it is also true that Jolo is a small part of the Philippine Archipelago; moreover, the Committee has more reason to believe the informations from the Chief Executive, than any information coming from other sources.

MR. AGREGADO. Is it not true that no fallacious argument can be made against actual facts?

MR. GENEROSO. That is a conclusion, the answer to which I leave to the gentleman himself from Batangas.

MR. AGREGADO. Mr. Speaker, I would like to have a chance to speak against the bill.

MR. GENEROSO. I am through, reiterating my request that the House agree with the Committee.

The SPEAKER. The Representative for Bohol has the floor.

MR. GALLARES SPEAKS AGAINST THE BILL

MR. GALLARES. Mr. Speaker, for the better un-

derstanding of the matter now before us, it is necessary to state a brief history thereof.

The Insular Government, upon the advice of its best experts on matter of finance, has acquired the conviction that much rent that belongs to it by operation of the law does not reach its treasury, on account of the books kept by some merchants being unintelligible, the same being kept in a language which cannot be understood by the Government. Hence, the Insular Government, persuaded of the fact, was compelled to recommend to this Legislature the enactment of a law, requiring all merchants without distinction to keep their books of account in English or Spanish, or in any dialect of the country. The Honorable Vicente Urgello, Representative for Cebu, finding the recommendation to be reasonable...

MR. EVANGELISTA. (D). I ask to be given, Mr. Speaker, an opportunity to speak against the bill.

MR. GALLARES. Introduced the bill whose explanatory note reads thus: "As the merchants established in the Philippines are not all of the same nationality, some of them keep their books of account in their native language. The investigation of these books by the agents of the Government for their proper verification is somewhat difficult, for in many cases it requires the assistance of a translator, which constitutes an expense to the public treasury. Uniformity and facility in the examination and investigation of these books require that the same be kept by the merchants, whether individuals or corporations, in English or Spanish."

MR. GENEROSO. I ask on behalf of the Committee that Representative Benitez be given a chance to speak.

MR. GALLARES. The said bill having been referred to the Committee on Revision of Laws, composed of the best lawyers of the country who are members of this House with honor, the Committee, through its chairman, who is the gentleman from Manila and is now advocating the passage of this bill now under the consideration of the House, has rendered its verbal report, which is very brilliant and eloquent as are all of his speeches; and by this report we are convinced, the House, the whole Legislature, is convinced of the necessity of passing and enacting the bill introduced by Representative Urgello.

Notwithstanding the eloquence of his report, Mr. Speaker, permit me to read verbatim the words, contained in the record of the House which were uttered then by the gentleman from Manila, Representative Generoso. They are as follows: "The bill now in order, whose passage is recommended by the Committee on Revision of Laws, tends to avoid an evil which is now noted in the manner in which certain merchants keep their account books. It was found in practice that while the official language in the Philippines is the English language, and in the courts of justice, the English and Spanish languages, some merchants keep their books in a language other than English and Spanish, thus placing many obstacles to certain investigations that the officials of the Government have to make of those

books, and giving rise, moreover, to other many inconveniences, to do away with which once and forever, the author has conceived this bill, and I now move that it be passed by the House." So the gentleman from Manila said in his verbal report.

MR. NOLASCO MAKES A PARLIAMENTARY QUESTION.

MR. NOLASCO. Mr. Speaker, I wish to ask the orator a parliamentary question.

The SPEAKER. The orator may answer if he pleases.

MR. GALLARES. Yes, sir.

MR. NOLASCO. I would like to know from the distinguished orator whether the question now under discussion is precisely contrary to the fundamental principles of the law enacted by the House during the last sessions.

MR. GALLARES. I would like to tell the gentleman from Manila that I am stating a little history of the matter, as I have announced at the beginning; I am relating the facts which led the House to the enactment of the bill. It is to be supposed, Mr. Speaker, that in studying the Urgello bill, the Committee took into account all the features of the question, having considered them carefully one by one, and so the Committee has unanimously recommended its passage by the House, which in turn enacted it also unanimously without any dissenting vote.

MR. BENITEZ MAKES SOME PARLIAMENTARY QUESTIONS.

MR. BENITEZ. Mr. Speaker, I wish to ask the orator some parliamentary questions.

The SPEAKER. The orator may answer if he pleases.

MR. GALLARES. Yes, sir.

MR. BENITEZ. Is it not a fact that the bill, as passed by the House, has been amended by the Senate so that Act 2972 now in force is not the same law then recommended by the Committee on Revision of Laws and passed by the House?

MR. GALLARES. Yes, sir, because it was intended to introduce an amendment, authorizing the Secretary of Finance to exempt certain merchants, and as we believed that was somewhat arbitrary, we had to amend it again.

MR. BENITEZ. Did the House of Representatives agree?

MR. GALLARES. Yes, but omitting that provision which I said seemed to be arbitrary.

(*Proceeding.*) What I do not understand, Mr. Speaker, in spite of the effort made by my humble mind is how and why certain members of the House have now changed of opinion.

MR. GENEROSO. I wish, Mr. Speaker, to ask the orator some parliamentary questions.

The SPEAKER. The orator may answer if he pleases.

MR. GALLARES. Yes, sir.

MR. GENEROSO. In what does the change of opinion consist in your judgment?

MR. GENEROSO. In that the Committee on Revision of Laws now recommends the postponement or the enforcement of this law on another date, when the same Committee approved it in February last to take effect on the first of November.

MR. GENEROSO. Then the change of position is also of the Government and the Senate, so that your statement includes all the elements that intervened in the bill?

MR. GALLARES. Yes, sir; it does.

(*Proceeding.*) With the passage of this measure, Mr. Speaker, I believe we are laying a bad precedent not only for the future legislature, but also for the posterity, because under the principle that no law, however good and just it may be, can be satisfactory to the whole world, the law that may be enacted by this Legislature, if, for instance, it prejudices in some way a determinate class or element of the community, would have to be repealed or its enforcement suspended, upon the making of protest by that class or element already referred to.

MR. CASENAS ORBETA. I wish, Mr. Speaker, to have a chance to speak against the bill.

MR. NOLASCO. I wish to speak in pro.

MR. SEVERINO. I wish to speak against it, Mr. Speaker.

MR. CUENCO. I wish to speak in favor.

MR. GALLARES. (*Proceeding*). Mr. Speaker, in enacting Act 2972, which is the existing Bookkeeping Law, we gave a period of seven or eight months to all the merchants in order for them to prepare and have sufficient time to engage the services of the

necessary personnel for the purpose of duly complying with th provisions of this law. As stated in the existing law, this Act was enacted in the last period and took effect on the first of November of this year. According to information taken from the newspapers, many of the merchants affected by this law have already begun to comply with its provisions and for this reason, Mr. Speaker, I am at a loss to understand why some merchants of this capital have protested against the enforcement of this Act when they can comply with it.

MR. SIAYNGCO MAKES SOME PARLIAMENTARY QUESTIONS.

MR. SIAYNGCO. Mr. Speaker, I wish to ask the orator some parliamentary questions.

The SPEAKER. The orator may answer if he pleases.

MR. GALLARES. Yes, sir.

MR. SIAYNGCO. May I know whether the postponement of the enforcement of the law now under discussion would cause any prejudice to the country?

MR. GALLARES. Yes, sir; for Representative Urgello, the author of this Act, in his explanatory note, as well as the Committee on Revision of Laws in its verbal report of February last, which are official documents, admit that the Government would greatly be prejudiced by that method of keeping the account books in language unintillegible to the Government.

MR. SIAYNGCO. If some prejudice is done to the country, may I ask if that prejudice is capable of estimation, and if so, how much it is?

MR. GALLARES. But does not the gentleman from Leyte know that the country is now passing through a critical situation, which requires funds and precisely at the present time we have under the consideration of this Legislature a problem which never in my parliamentary life have I met with, as a humble member of this Legislature, such as to put the expenses and the incomes on the same level.

MR. SIAYNGCO. It seems that my question has not been answered categorically. I wish the orator to answer me categorically.

MR. KAPUNAN. Is there no restraining means on the part of the Government to prevent those concealments of which your Honor has spoken a little ago?

MR. GALLARES. At least the experts of the Government have recognized that the best solution to this problem is to compel each and every one of the merchants to keep their books of account in English, Spanish or any local dialect.

MR. PURUGGANAN MAKES SOME PARLIAMENTARY QUESTIONS.

MR. PURUGGANAN. Mr. Speaker, I wish to ask the orator some parliamentary questions.

The SPEAKER. The orator may answer if he pleases.

MR. GALLARES. Yes, sir.

MR. PURUGGANAN. Is it not true that many Chinese are already keeping their books in accordance with the existing law.

MR. GALLARES. Yes, sir.

MR. PURUGGANAN. Is it not true that the Chinese are not all in accord?

MR. GALLARES. I understand that a small part of the Chinese community has protested, but the rest are complying strictly with the provisions of this Act, according to the newspapers.

(*Proceeding.*) Mr. Speaker, it is true that the Honorable Governor-General Wood has recommended to this Legislature the postponement of the enforcement of this law until the first of January, 1923, for the reasons the chairman of the reporting Committee has just stated to the House. I remember that it is a rule observed and practiced by these House, that the recommendations of the Executive are not all to be followed to the letter. If the representatives of the people consider them to be prejudicial to the Government or to the country, this Legislature has always had the courage to reject or ignore them. I remember that during the administration of our beloved ex-Governor Harrison, the latter has made thousands of recommendations, a long list of recommendations, to this Legislature, but, believing that some of them were impracticable and others prejudicial, as we then understood, to our country, we have rejected several of his recommendations. Now comes our dear Governor-General Wood; the first recommendation, as I understand, that he made to this Legislature is the postponement of the enforcement of this law until the first of January, 1923. I believe, Mr. Speaker, that to pass this bill, as recommended by Governor-General Wood, would amount to supposing that we have

now in the Philippines a tyrant Governor, a despotic Government, that wants to impose its will or caprice upon the whole people or their legitimate representatives. Everybody knows that if Governor Wood is admired by the whole country, it is because he is very liberal, and judging from the statements made by him in his inspections of all the provinces of the Archipelago, he has shown himself to be a legitimate son of America, a one hundred per cent American, son of the land of the books and the brave who profess the principles of democracy and liberty. Why should we, Mr. Speaker, be afraid that, if this Act is not passed by us, the harmony will be broken between the Legislature and the Executive? I do not think so, Mr. Speaker, because, as I have stated before, those who know the qualities and virtues of our dear Governor-General Wood do not entertain any such fear.

Mr. Speaker, if we reject this bill, it is because we consider it prejudicial to the country, and I believe the Governor-General would not be disgusted by our attitude.

MR. GALLARES. It is true that above all is the interest of the country.

(*Proceeding*). Mr. Speaker, the fact was alleged that if we do not pass this bill, providing for the enforcement of the Bookkeeping Law on the 1st of January, 1923, it might cause the Chinese Republic, so it was said, in case we should ask her to recognize our future independence, to refuse to do so. The best brains of the world are now studying plans to insure in the future the peace and concord between the peoples of the earth. I believe in the

international justice, upon which the prosperity and welfare of all the peoples of the world rest. If so, Mr. Speaker, why should we be afraid of a neighbor friend, a friend who needs us, and whom we need in our affairs? Why should we be afraid of those who, in need of our help as a compensation for the help we are giving them, would not hesitate to recognize our independence? By common sense, it is known that when a person does not want to have troubles with his neighbor, said troubles do not arise. By common sense, I believe that a nation like China does not want to have troubles with her neighbor, the Philippines, and other countries surrounding her. All the world knows that China is inhabited by merchants; a merchant wants to have friendly relations with the whole world; he does not want to have any enemy because he knows his prosperity and happiness depend upon the favor, the benevolence or good will of the public patronizing him. For centuries, as was asserted by the chairman of the reporting Committee, the chairman of the Committee on Revision of Laws, the Chinese have been living with us, have been doing business in this country and thanks to our good will, they have thrived and are thriving nowadays, and I do not think that just because of this Act, they are willing to loose their happiness and welfare, which, perhaps, they will not find in any other country.

MR. AGREGADO MAKES ANOTHER PARLIAMENTARY QUESTION.

MR. AGREGADO. Mr. Speaker, I want to make another parliamentary question to the orator.

THE SPEAKER. The orator may answer if he pleases.

MR. GALLARES. Yes, sir.

MR. AGREGADO. Is it not true that the non-suspension of the operation of Act No. 2972 would not alter in the least the good international relations between the American Government and the Chinese, inasmuch as the Chinese residing in the Philippines whose interests are supposed to be injured by this Act are considered there by the present Government of China as revolutionists, and consequently the protection of the present Government of China does not extend to them?

MR. GALLARES. I do not know, I cannot answer that.

(*Proceeding.*) The Filipino lawyers who have just returned from that country, in a statement published in the newspapers, if I remember well, have asserted that the highest officials of that republic do not even have any knowledge of this Act, because I believe that those who have stirred this matter and who have even thought to appeal to the League of Nations are the Chinese residing here, although not all of them joined this movement, and the best proof of it is that many Chinese comply with the existing law.

THE SPEAKER. I want to close, reminding the members of the House that if we pass this bill suggested by the Committee on Revision of Laws, we would be laying a bad precedent for future legislatures and for the country. If it is not enacted into law, on the other hand, I am sure that it would not

cause the rupture of hostilities between the Executive and the Legislature, and I also believe, Mr. Speaker, that if the bill is rejected, then we would thereby show to the people who have elected us that we know how to defend and keep the prestige now enjoyed by the Legislature. For all of the foregoing, I move that the bill recommended by the Committee on Revision of Laws by rejected.

THE SPEAKER. The Representative from Laguna has the floor.

SPEECH IN PRO, OF MR. BENITEZ

MR. BENITEZ. Mr. Speaker, after the report of the chairman of the Committee on Revision of Laws, I would have refrained from taking part in this debate so as to save time; but on account of the statements made by the preceding orator, I am compelled, Mr. Speaker, to speak in order to defend, not the Committee on Revision of Laws, because said Committee is not in need of any defense, but precisely the interests of the Filipino people and especially of the House.

This bill, Mr. Speaker, was not introduced because of any fear of a rupture that may arise of the harmony that should exist between the Executive and the Philippine Legislature. The very fact mentioned by the gentleman from Bohol that this Legislature in the years past has been constantly rejecting recommendations of the Chief Executive proves that, if this Committee now recommends the adoption of the suggestions of the Executive, it is not for lack of courage, but precisely in order to defend the interests of the country.

We have, Mr. Speaker, before us a law, Act No. 2972, which is now in force. We may either allow it to continue in force, or repeal it. But in view of the arguments adduced when the original bill was passed by the House; in view of the statement of those who are against this bill that Act No. 2972 is really beneficial to the country, we do not recommend its repeal, but recommend only that the Governor-General be authorized to suspend its operation, because the purposes for which this law was enacted would thereby be better accomplished.

MR. LOZANO. I wish to be given a chance to speak against the bill.

MR. DE LOS REYES. I wish to have a chance to speak in favor of the bill.

MR. VIRATA. I wish to speak against it.

MR. RECTO MAKES SOME PARLIAMENTARY QUESTIONS.

MR. RECTO. As I understand, both Houses are now discussing this bill pursuant to the message of the Governor-General, recommending the postponement of the enforcement of Act 2972.

MR. BENITEZ. Yes, sir.

MR. RECTO. I also understand that the recommendation of the Governor-General was due to a petition presented to him by the Chinese community in Manila.

MR. BENITEZ. I do not know that; what I know is that the Governor-General has recommended this measure in view of the impossibility to comply with the law at present.

MR. RECTO. Does not your Honor believe that the recommendation of the Governor-General was due to the protest made by the Chinese against this law?

MR. BENITEZ. I cannot speak for the Governor-General. He alone knows the reason for his recommendation; and when he made it, there must have been some reason for doing so.

MR. RECTO. Your Honor must have heard or read the message of the Governor-General.

MR. BENITEZ. Yes, sir.

MR. RECTO. Has your Honor paid attention to the paragraph which says: "In the line of the economical development of the Philippine Islands, the commerce with China and other foreign countries of the Orient and their nationals in the Archipelago dates from the prehistoric times, and is nowadays an element of the greatest importance. In the future, a forecasting government policy should lead to the preservation and continuation of the development of these valuable mercantile relations and increasing friendship." In view of this paragraph of the message of the Governor-General, does not your Honor believe that this message is due to the protest made by the Chinese against this bill?

MR. BENITEZ. I do not think that it is for that reason precisely. May be, that is one of the reasons why the Governor-General included that paragraph in his message.

MR. RECTO. So that your Honor believes that both Houses are going to suspend the enforcement of this law only in the interest of the Government in applying the law more effectively?

MR. BENITEZ. Yes, sir.

MR. RECTO. Will your Honor please explain the reasons, if your Honor knows them, why it will not be possible to apply this law effectively on the first of November of this year, the Chinese merchants having had sufficient time to get ready for it, from the month of February last, when this Act was enacted, up to the present time?

MR. RECTO. Will your Honor please tell us what interest Internal Revenue can have, with the exception of seeing that this law is complied with, in order that the Chinese merchants should keep their books in English, Spanish or any local dialect?

MR. BENITEZ. It has to make some rules and regulations.

MR. RECTO. Does that appear in the Act?

MR. BENITEZ. That is precisely why it is desired to suspend this Act, that is, in order to give the Executive an opportunity to recommend the manner in which this law can be made practicable.

MR. RECTO. Is your Honor sure that it is Internal Revenue who asks for the postponement of this law?

MR. BENITEZ. No, sir, but the Executive recommends it.

MR. RECTO. And the Executive is well acquainted with the present conditions to ask for the postponement of this law; the Executive is in a better position than Internal Revenue, is that it?

MR. BENITEZ. The Executive has control of that agency of the Government.

MR. RECTO. Is it not true that the informations

of the Executive must have come from the Bureau of Internal Revenue?

MR. BENITEZ. I believe that the Governor-General has ample authority to see to the proper management of all the bureaus. May be, Internal Revenue maintains a different opinion from that of the Executive, and I would give more credit to the Executive in this case.

MR. RECTO. On this particular point is Internal Revenue of the opinion that the Act may operate immediately?

MR. BENITEZ. It is not of that opinion.

MR. RECTO. That was my question,—whether it was Internal Revenue who asked for the postponement of the law.

MR. BENITEZ. The Bureau of Internal Revenue can not address the Legislature.

MR. RECTO. That is what I asked, and your Honor answered that Internal Revenue asked for it.

MR. BENITEZ. It is the Executive who asked for it, upon the advice of Internal Revenue.

MR. RECTO. Is it not a fact that the Bookkeeping Law was recommended by the Bureau of Internal Revenue when the Legislature enacted it during the last sessions?

MR. BENITEZ. Yes, sir.

MR. RECTO. And is it not true that the original bill was amended as to that section wherein it was provided that the law was to take effect in November, at the petition of the Chinese, and not of the Bureau of Internal Revenue?

MR. BENITEZ. Internal Revenue had recommend-

ed a different law, wherein authority was given to the Secretary of Commerce and Communications to make the necessary regulations for the proper compliance with the law?

MR. RECTO. I am talking about the bill of Internal Revenue, about its section relative to the date when the law was to take effect. Is it not true that in that section it was said that the law shall take effect immediately upon its approval?

MR. BENITEZ. I do not remember that.

MR. RECTO. Does not your Honor remember that after the approval of that law, came the protest of the Chinese, and for that reason it was amended so as to take effect on the first of November?

MR. BENITEZ. I do not know where that appears.

MR. RECTO. What I want with all these questions is to make the point clear before the House as to who is interested in the postponement of this law, whether it is the Government, because Internal Revenue can not enforce it in spite of the amendment, or the Chinese, because they can not comply with the law.

MR. BENITEZ. It is the Executive, who is charged with the enforcement of the law.

MR. RECTO. The Executive from the point of view of Internal Revenue, because that bureau can not enforce compliance with the law, or the Executive from the point of view of the Chinese?

MR. BENITEZ. From the point of view of the branch of the Government charged with the enforcement of the laws.

MR. RECTO. So that the Committee is of the

opinion that Internal Revenue can not enforce this law?

MR. BENITEZ. Yes, sir. In the opinion of the Internal Revenue agent, that bureau has supervision only of the books wherein sales are entered, and those having reference to the payment of income tax.

MR. RECTO. So that in your Honor's opinion and that of the Committee, the postponement of this law is due, not to the petition of the Chinese, but to the fact that the Bureau of Internal Revenue can not enforce it?

MR. BENITEZ. It is recommended by the Executive, because, according to informations he has, Internal Revenue is not yet in a position to enforce this law.

MR. AGREGADO MAKES SOME PARLIAMENTARY QUESTIONS

MR. AGREGADO. Mr. Speaker, I want to make some parliamentary questions to the orator.

THE SPEAKER. The orator may answer, if he pleases.

MR. BENITEZ. Yes, sir.

MR. AGREGADO. Is the orator sure that the many Chinese now residing in the country are at present complying with Act No. 2972?

MR. BENITEZ. They are not complying with the law at present.

MR. AGREGADO. Does the orator know that in this country there are many foreign merchants who keep their books in another language, such as the Japanese, Turks, and Syrians, who use the Arabic alpha-

bet, and yet they perfectly comply with the purposes of this law?

MR. BENITEZ. We do not know whether they perfectly comply with the law; there is no data as to that. The fact is that the Executive says that he can not enforce this law.

MR. AGREGADO. But does not your Honor know that the merchants of the Arabic race and the Japanese are in the same situation as the Chinese?

MR. BENITEZ. Possibly.

MR. AGREGADO. And has your Honor ever heard of any complaint, claim or protest on the part of these other foreign merchants who know our writing?

MR. BENITEZ. I do not know of any case. What the Committee knows is that all the foreign merchants in the country are in favor of the attitude taken by the Executive.

MR. AGREGADO. Are those merchants mentioned by your Honor in favor of the petition of the Chinese because it benefits the Chinese, or because it is beneficial to themselves?

MR. BENITEZ. Your Honor had better made the question to those merchants, because I am not speaking in favor of any merchant.

MR. AGREGADO. Is it not a fact that those merchants support the petition of the Chinese for fear that the latter might boycott them?

MR. BENITEZ. I do not know that. You may ask those merchants about it, and I request your Honor to speak against the bill if you wish.

MR. AGREGADO. Does your Honor know that the

foreign merchants need be in harmony with the Chinese because of their large interests in China?

MR. BENITEZ. I do not know that.

MR. LOZANO MAKES SOME PARLIAMENTARY QUESTIONS.

MR. LOZANO. Mr. Speaker, I would like to ask the orator some parliamentary puestions.

THE SPEAKER. The orator may answer, if he pleases.

MR. BENITEZ. Yes, sir.

MR. LOZANO. Your Honor, in the course of your Honor's speech, said something about the original from which a proviso was eliminated when it was passed by the Senate.

MR. BENITEZ. Yes, sir.

MR. LOZANO. What proviso was your Honor referring to?

MR. BENITEZ. To the proviso authorizing the Secretary of Finance to make the necessary regulations.

MR. LOZANO. Does your Honor remember that the original bill, as conceived prepared and presented by the Representative for Cebu, did not contain that proviso?

MR. BENITEZ. Yes, sir, but the Committee.....

MR. LOZANO. I wish that your Honor should answer me categorically,—whether or not it contained that proviso.

MR. BENITEZ. It did not, but the same Representative for Cebu presented another bill in substitution of the original one.

MR. LOZANO. Does not your Honor remember that the author of the bill was absent when it was submitted to the House?

MR. BENITEZ. That has nothing to do with the matter under discussion.

MR. LOZANO. Why not? Because your Honor affirms that the author of the bill .....

MR. BENITEZ. Really that is a question your Honor ought to ask me, because I do not have the note .....

MR. GENEROSO. The Committee is prepared to answer that question, if the gentleman from Laguna is not a position to answer it.

THE SPEAKER. I do not think that the answer required by the gentleman from Iloilo is so broad as not to be capable of being answered by the gentleman from Laguna.

MR. LOZANO. If the Representative to whom the question was made is not in a position to answer the question.....

MR. BENITEZ. I have already answered, Mr. Speaker.

MR. LOZANO. Well, is it true that that bill was afterwards substituted by the Committee by another bill in which a proviso was introduced and which the Senate passed eliminating the proviso? So that there was no omission, as your Honor says.

MR. BENITEZ. I have already answered that during my speech.

MR. LOZANO. Your Honor said that it was omitted, and it is one thing to omit, and another to reject or pass.

MR. BENITEZ. I have already said what I wanted to say on the point in the best manner I could express myself, and I believe that the gentleman from Iloilo can no longer ask me about it.

MR. LOZANO. What did your Honor mean when your Honor said that it was omitted? Was there any intention to omit the proviso?

MR. BENITEZ. I believe your Honor can interpret that phrase as your Honor pleases.

MR. LOZANO. I believe that in speaking in Spanish and saying that it was omitted, your Honor knew the meaning and effect of the word "omitted". It called my attention, because it seems to involve a charge against somebody.

MR. BENITEZ. Well, that word is subject to any interpretation. I have used it and whatever it may mean I have to abide by it.

MR. LOZANO. Well, does not your Honor remember that after the bill was passed by the Senate, with the elimination of the proviso authorizing the Secretary of Finance to exempt from complying with the law, or to suspend the operation thereof as to, certain and determinate persons who in his judgment could not comply with the law, that bill came back to the House and the House passed it, agreeing with the Senate?

MR. BENITEZ. That question need no answer, because everything appears in the record.

MR. LOZANO. Everything your Honor said here also appears in the record, and yet we have had the patience to listen to you.

MR. BENITEZ. I request the gentleman from Iloilo to have patience and to sit down.

MR. LOZANO. Well, we will both sit down at the same time.

MR. ANGELES DAVID. Mr. Speaker, I wish to have a chance to speak against the bill.

THE SPEAKER. The gentleman from Iloilo has the floor.

MR. EVANGELISTA. Mr. Speaker, I regret very much to dissent from the report of the Committee on Revision of laws, but in doing so, I am convinced that I am defending the interests of my country, as its Representative. I rise to defend, moreover, the Honor of the House to which I have the honor to belong. The Legislature in enacting Act 2972 in the last period, has done, in my opinion, but to follow the real principles of justice, reason and equity. Frankly, I am at a loss to understand how so important a matter has been urgently disposed of by the Upper House.

THE SPEAKER. I call the attention of a gentleman from Iloilo that it is improper for any member of the House to speak about any action of the other House.

MR. EVANGELISTA. (D). Then I withdraw my statement, (*Proceeding.*) But setting all the considerations taken in adopting these measures, I will confine myself to the consideration we ought to make of the matter. It is known to everybody that at the closing of the sessions of the last period,—at the passage of this law,—the Chinese community made a movement attempting to annul the law, through more or less unbecoming means, and exposing the Philippine Legislature to ridicule. You should have

noted that since the enactment of the law until it took effect, which was on the first of this month, ten months have elapsed, but none of those affected has done anything on his part tending to complying with the provisions of the law, specially the Chinese merchants who did not only pay no attention to it, but also resorted to Washington, ignoring the Philippine Legislature. I am, gentleman, referring to the Chinese commission who has traveled through the most important cities of the United States, making propaganda, declaring everywhere that they had been the subject of an injustice on the part of the Philippine Legislature. They offered banquets, paid large sums of money to newspapers and reviews to win the public opinion to their cause and to show that the Philippine Legislature enacts unjust and foolish laws.

MR. DE GUZMAN MAKES SOME PARLIAMENTARY QUESTIONS

MR. DE GUZMAN. Mr. Speaker, I wish to ask the orator some parliamentary questions.

THE SPEAKER. The orator may answer, if he pleases.

MR. EVANGELISTA (D.) Yes, sir.

MR. DE GUZMAN. Has your Honor had a chance to read in one of those newspapers or reviews any article wherein the prestige of the Philippine Legislature was injured?

MR. EVANGELISTA (D.) Yes, sir.

MR. DE GUZMAN. What article?

MR. EVANGELISTA (D.) I do not remember now,

but it is at home and if your Honor wishes, your Honor may see me at home.

MR. DE GUZMAN. Does not your honor remember the contents of the article?

MR. EVANGELISTA (D.) Yes sir, the article says in substance that the Philippine Legislature had committed an injustice by enacting a foolish law.

MR. DE GUZMAN. Are you subscriber to any newspaper or review of the Metropolis?

MR. EVANGELISTA (D.) No sir, but I bought them from time to time.

MR. DE GUZMAN. What newspaper have you bought?

MR. EVANGELISTA (D.) Several.

MR. DE GUZMAN. Can your Honor tell me what newspapers are they?

MR. EVANGELISTA (D.) I have already said that they are several, if you want to be better informed, you may come to my house.

MR. DE GUZMAN. In what language are those articles written?

MR. EVANGELISTA (D.) In English.

MR. SIAYNGCO. I want only to ask the orator whether he opposes the postponement of the enforcement of this law to revenge the supposed insult that he believes was done to the Philippine Legislature.

MR. EVANGELISTA. I would request the gentlemen of the house that, if they want to ask me about the matter I am talking about, they should do so after my speech. (*Proceeding.*) To continue, Mr. Speaker, speaking about America and the mission that had gone there, I have learned, moreover,

through our Press Bureau, that it is even affirmed that a good sum of money was paid to an attorney in order that he should work in the Congress in favor of the cause of those Chinese, and obtain, if possible, an order from that Government directed to ours, imposing the postponement of the enforcement of this law.

All means are good to the Chinese provided they will thereby accomplish their purpose. This is proven by the fact that the Chinese element is capable of making all kinds of combinations, whether legal or illegal, specially in business matters. The Chinese smuggler of opium does not find it objectionable to propose to a judge of first instance, a fiscal or chief of the Constabulary to let him import opium in exchange of a diamond ring or some thousands of pesos. And if he is the owner of an opium smoking-room or a gambling house, he does the same thing. If he is a merchant on Calle Rosario, then the person purchasing from him receives as exchange of his bank note some false coins, or the change he gives is short one or two centavos. Mr. Speaker, to corroborate this assertion of mine, I will have the honor to read here some paragraphs of our Philippine bible. Rizal's "El Filibusterismo," when speaking of the Chinaman Quiroga. The title reads thus:

"THE TROUBLES OF A CHINAMAN

On the night of that Saturday, the Chinaman Quiroga, who was desiring to create a consulate for his nation, was giving a dinner in the upper story of his bazar situated on the Escolta. Many people were

present at the banquet,—friars, employees, military men, merchants, all of his customers, partners or patrons were there; his store supplied the curates and convents with all necessaries; he honored the "vales" of all the employees, and had faithful, condescending and active servants. The friars themselves do not mind spending the time in his store, either at the sight of the public, or in the rooms inside the building in pleasant conversation...

That night, then, the hall presented a curious aspect. It was filled with friars and employees seated on Vienna chairs and small benches of brown wood and of marble, taken from Canton, before small square tables, playing "tresillo" (card game) or conversing at the bright light of the golden lamps, or at the pale light of Chinese lanterns elegantly decorated with long tassels of silk. On the walls there was a deplorable mixture of landscapes, tranquil and bluish, painted in Canton and Hongkong, with screechy chromos of odalisks, half-naked women, feminine lithographs of Christ, the death of the just and of the sinner, made by Jewish firms in Germany for their sale in catholic countries. There were not lacking there Chinese pictures on red paper, representing a seated man with a venerable and peaceful countenance and smiling face, behind whom stands his servant, horribly ugly, diabolical, threatening, and armed with a lance, with a wide sharp blade; some of the natives call him *Mahoma,* and others *Santiago,* we do not know why. Neither can the Chinese give a clear explanation of this popular duality. Explosions of bottles of champagne wine,

collision of cups, laughters, smoke of cigars, and a certain odor peculiar of a house of a Chinese, a mixture of aromatic burning-stick, opium and preserved fruits, completed the whole.

Clothed like a mandarin, and wearing a cap with blue tassel, the Chinaman Quiroga was walking from one room to another, straight and stiff, casting vigilant looks here and there, as if for the purpose of satisfying himself that none was taking away anything... And in spite of this natural distrust, he shook hands with everybody, saluted some with a fine and humble smile, some with a protecting countenance, and others with scorn, as if saying:

'I know it already; you do not come for me but for my dinner.'

And the Chinaman Quiroga was right. That fat gentleman who is now praising him and is speaking with him about the necessity of a Chinese consulate in Manila, thereby giving it to understand that for that office none was fitted other than Quiroga, is Mr. Gonzalez, who signs with the name of *Pitili* when he attacks the Chinese immigration in the newspapers. That other man, aged already, who examines at a short distance the objects, the lamps, the paintings, etc., and grins and utters despising exclamations, is Don Timoteo Pelaez, father of Juanito, a merchant who clamours against Chinese competition that ruins his trade. And the other down there, that brown gentleman, thin, with active look and pale smile, is the famous author of the Mexican pesos question that caused much trouble to a protégé, of the Chinaman Quiroga. That employee is known

in Manila as a smart fellow. And that other man, with a frowning look and neglected mustache, is the employee regarded as the most worthy, because he is brave enough to speak against the lottery business carried on between Quiroga and a lady of the Manila aristocracy. Indeed if not one-half two-thirds of the tickets go to China, and the few ones that are left in Manila are sold with a premium of one "real fuerte." That worthy gentleman is convinced that sometime he will win the big prize, and gets made when he meets such fellows....

Meanwhile the dinner was drawing to the end. From the hall are heard the drinkings to the health of somebody, the laughters, interruptions, cachinnations... The name of Quiroga is heard several times repeated, connected with the words consul, equality, rights....

The host, who did not eat European dishes, had contented himself with drinking from time to time a cup with his guests, promising to sit at the table with those who had not eaten yet.

Simoun had come after taking his supper at his home, and was conversing in the hall with some merchants who were complaining of the state of business affairs,—everything was going wrong, commerce was paralyzed, the exchange in Europe was at an exorbitant rate. The jeweler was asked to throw light on the matter, or some ideas were intimated to him in the hope that he would transmit them to the Governor General. To every remedy proposed by them, Simoun answered with a sarcastic and bru-

tal smile,—"far from it, useless"...,—until one got mad and asked him his opinion.

—My opinion?, asked he, in turn; you study why other nations are thriving, and then you do what they are doing.

—And why do they thrive, Mr. Simoun?

Simoun shrugged up his shoulders and did not answer.

The port works that tax the trade so much, and the port that never comes to be finished, said Don Timoteo Pelaez. A cloth from Guadalupe which is woven and unwoven... The taxes...

—And you complaint?, asks another. Now that the Governor General has just decreed the demolition of the houses of light materials!... And you who have a shipment of galvanized iron!...

—Yes, answered Don Timoteo; but how much that decree hos cost me!... And then the demolition is not to take place until after a month, until Lent. Other shipments may come... I would have preferred the immediate demolition, but... And besides, who is to buy my iron, if all of the owners of those houses are poorer than a rat...

—You may buy the small houses for a triffle....

—And then have the decree withdrawn, and resell them at double the price... That's a good business...

Simoun smiled coldly, as is usual with him, and seeing the Chinaman Quiroga come toward him, left the complaining merchants to greet the will-be- consul. The latter had hardly seen him, when he lost his satisfied countenance, assumed another similar

to that of the complaining merchants, and made a half bow. The Chinaman Quiroga respected the jeweler very much, not only because he knew he was very rich, but because there was a rumor about certain intelligence between him and the Governor General. It was said that Simoun was in favor of the ambitions of the Chinaman, was advocating the creation of the consulate, and a certain newspaper, defender of the Chinese, made allusions to him through long circumlocutions, innuendoes and reticences, in the famous debate held with another newspaper addicted to the Chinese. Most prudent persons added with winks and incoherent words that the *Eminencia Negra* advised the General to make use of the Chinese in oppressing the tenacious dignity of the natives."

Wtih these paragraphs, I want to show to the House that to accomplish his purpose, the Chinese makes use of many devices and employs means like those employed by the Chinaman Quiroga, who desired to be a Chinese consul in the Philippines.

I will now answer some of the arguments of Mr. Dee Siy Chuan, president of the Chinese Chamber of Commerce, who says in his memorandum the following: "The Chinese have always maintained most friendly relations with the Filipino people." At present, gentlemen, I admit that that is relative true; but if we read the history of the Philippines, we will see that some years ago there were revolutions initiated by the Chinese in Intramuros and one in Antipolo. The History of the Philippines says thus:

"There came to Manila in the month of May, 1603, three mandarines stating that one Quia Nu Gong had said that in the Philippines there was plenty of gold and silver, that in Cavite there was a mountain of gold, and that for that reason they had come to ascertain the truth thereof. Governor Acuña received them, and allowed them to visit the Parian of the Christian *sangleys*, as well as Cavite, where they were accompanied by Alferez (ensign) Cervantes.

"Upon their return to their country, the governor gave them a silver fountain and many other things as a present.

"During the excursion of the mandarins in Manila, they were accompanied by a Christian Chinese who was very rich, by the name of Juan Bautista de Vera, and who in his country was known as En-Kang, which name was given him by the *sangleys*. Following the visit made by those mandarins, a rumor came about to the effect that the Chinese were coming to conquest the Philippines, which was confirmed by the Archbishop, who not only said his fear in public, but mentioned it in a sermon and told it to the Governor.

"Precautions were taken, by ordering the destruction of the houses of some *sangleys* near the walls, where ditches were ordered dug, which contained water, and shortly thereafter a warning was sent to the mayors of Pampanga, Bulacan and other provinces, so that they might prepare men, who in case of need could make a defense, and requiring them to give the number of those enlisted.

"The Chinese were uneasy and held meetings, believing that they were to be killed on Saint Francis's holiday, and that idea could not be taken from their minds, nothwithstanding the assertions to the contrary made by the Governor.

"69.—As a consequence of said distrust, the Chinese initiated a revolution, and on October 3, 1603, they built a fortress in Antipolo which was one and a half *legua* (league) from Manila, where there were forty captains, each with one hundred fifty men, having elected as their chief the Christian Chinese Juan Hontai, who was a godson of En-Kang. All the other *sangleys*, who went to the place with their wives and children, joined them.

"After being designated as the head of those revolutionists, Hontai said that the true chief was his godfather Eng-Kang, who was expected at any time. They set fire to the house of Captain Esteban Marquina, and killed the latter's wife and children, one of the girls having been saved from the fire.

"This fire was an alarm that at midnight set in motion all the town.

"On the next day Quiapo and Tondo were burnt, the Chinese trying to seize the latter's church, but they failed on account of the forces sent by the governor having resisted the attack. Pursued by the Spaniards, the Chinese caused them to fall into a trap, where they were killed.

"As En-Kang did not appear, the *sangleys* thought that Hontai had deceived them, and they beheaded him, appointing in his place two chiefs, the latter encouraged the *sangleys* residing at Parian, who

crossed the river on *balsas* (bamboo crafts) and other crafts.

"The event having been communicated to the province of Pampanga and Bulacan, four hundred Chinese were taken prisoners in the former, and a large number of natives presented themselves well armed to fight the revolutionists, who on October 3rd were organized into two divisions. One was stationed at Parian, and the other, composed of six thousand men, attacked and captured the convent of 'Nuestra Señora de la Candelaria,' belonging to the Franciscan Order, which was 500 feet from the walls, but were cannonaded and abandoned the place, after attempting in vain to scale the Parian Gate by means of an apparatus that they were carrying, and many were killed (they were more than 5,000) when cannons were used against them, which were prepared for the purpose in front of the place where they were. In this battle, Filipinos and Japanese joined the *sangleys*.

"Seing that it was difficult to capture the walls, the *sangleys* went to Dilao, where forts were built, but from which they were driven away, and pursued up to Cabuyao, Laguna, where "Sargento Mayor" and Captain Cristobal de Azcueta y Manchata followed them, taking with him 200 Spaniards, 300 Japanese and 5,000 Filipinos, of whom 4,000 were Pampangos and 1,000 Tagalogs, who fought so bravely that after klling a large number of the revolutionists (they were about 25,000), put them to flight, thus giving an end to this affair on the 20th of said month of October.

"The Chinaman Juan Bautista de Vera and the principal leaders paid their crime with their lives (42). In this fight the ex-Governor, Don Luis Perez Dasmariñas, a nephew of Governor Acuña, perished with many other persons."

This shows us, gentlemen, that not always have the Chinese been friendly to the Filipinos. Whenever they could neutralize and exploit the Filipino, they have done so.

Dee Siy Chuan says further in his memorandum: "They have married here and formed Philippine families." Mr. Speaker, that was true formerly, but after some years, many Chinese have brought, and are bringing their Chinese wives.

These last days when public opinion was eagerly a waiting the decision of the House on this matter, various commentaries have been heard, and among others, the following: If the Philippine Legislature does not want to pass the postponement of the enforcement of this Act, the Governor General, as the Executive, will not enforce it. I now say, Mr. Speaker; if this is true, it would be a good and holy thing for the Governor to do what he pleases, but that is not any reason why we should abdicate our rights and sacrifice our convictions. The Legislature must stand in its own place. If we are convinced that with the enforcement of this law many troubles of our treasury will be done away with

Exhibits 33-A and 33-B are copies of the bill of exceptions and the decision of the Supreme Court in the case of Lim Chai Seng *vs.* Wenceslao Trinidad, G. R. No. 16671.

On the 16th day of January, 1924, the Supreme Court issued the following order:

> The Court having been given to understand in the case of Yu Cong Eng *et al vs.* W. Trinidad etc. *et al.*, R. G. No. 20479, that all of the evidence is now in with the exception of the statistics being prepared by the office of the Collector of Internal Revenue, and the Court being desirous of reaching a decision on the case if possible before the adjournment for the next Court vacation, while at the same time giving the parties sufficient notice, the hearing in the case above mentioned is set for Monday, March 3, 1924 at 9 A. M.

On the 29th day of January, 1924, the Acting Collector of Internal Revenue filed the following:

> (CAPTION AND TITLE OMITTED)
>
> Comes now the undersigned Acting Collector of Internal Revenue and complying with the order of this Honorable Court under date of July 11, 1923, issued at the instance of the counsel for the petitioners, submits the attached statements showing the totals
>
> (1) OF SALES TAXES AND PENALTIES paid during the years 1918 and 1922 by Chinese merchants, as well as those paid by merchants of other nationalities including Filipinos; and
>
> (2) OF INCOME TAXES assessed during the same years of 1918 and 1922 against

Chinese taxpayers, as well as those assessed against taxpayers of other nationalities including Filipinos.

which statements are marked, for purposes of identification, as Exhibits X and X-1 and made integral part hereof.

Manila, P. I., January 29, 1924.

JUAN POSADAS, Jr.
Acting Collector of Internal Revenue.

EXHIBIT X

STATEMENT OF SALES TAXES AND PENALTIES PAID BY CHINESE MERCHANTS AS COMPARED WITH THOSE PAID BY MERCHANTS OF OTHER NATIONALITIES INCLUDING FILIPINOS DURING THE YEARS 1918 AND 1922.

TAXES 1918

	Amount	*Per cent*
Paid by Chinese merchants.....	₱ 5,212,751.21	39
Paid by merchants of other nationalities including Filipinos..	₱ 8,059,311.81	61
Totals.....	₱13,272,063.02	100

PENALTIES 1918

Paid by Chinese merchants.....	₱ 26,426.11	16
Paid by merchants of other nationalities including Filipinos.	136,119.11	84
Total.....	₱ 162,545.22	100

TAXES 1922

Paid by Chinese merchants.....	₱ 3,829,357.69	39
Paid by merchants of other nationalities including Filipinos.	5,988,462.97	61
Total.....	₱ 9,817,820.66	100

PENALTIES 1922

Paid by Chinese merchants.....	₱ 13,693.99	8
Paid by merchants of other nationalities including Filipinos.	153,615.09	92
Total.....	₱ 167,309.08	100

I hereby certify that, to the best of my knowledge and belief, the above statement is correct.

JUAN POSADAS, Jr.,
Acting Collector of Internal Revenue.

Manila, January 24, 1924.

Sworn and subscribed before me this 29th day of January, 1924.

V. ALBERT,
Clerk of the Supreme Court of the P. I. Ex-Officio Notary Public.

EXHIBIT X-1

STATEMENT OF INCOME TAXES ASSESSED AGAINST CHINESE TAXPAYERS AS COMPARED WITH THOSE ASSESSED AGAINST TAXPAYERS OF OTHER NATIONALITIES INCLUDING FILIPINOS FOR THE YEARS 1918 AND 1922.

TAXES 1918

	Amount	*Per cent*
Chinese	₱ 684,832.79	20
Others	2,720,850.51	80
Total.....	₱3,405,683.30	100

PENALTIES 1918

Chinese	₱	3,360.79	47
Others		3,725.89	53
Total	₱	7,086.68	100

TAXES 1922

Chinese	₱	356,898.68	16
Others		1,905,535.47	84
Total	₱	2,262,434.15	100

PENALTIES 1922

Chinese	₱	8,558.66	18
Others		37,171.90	82
Total	₱	45,730.56	100

I hereby certify that, to the best of my knowledge and belief, the above statement is correct.

JUAN POSADAS, Jr.,
Acting Collector of Internal Revenue.

Manila, January 24, 1924.

Sworn and subscribed before me this 29th day of January, 1924.

V. ALBERT,
Clerk of the Supreme Court of the P. I. Ex-Officio Notary Public.

On the 29th day of January, 1924, the petitioners filed the following announcement of termination of petitioners' proofs:

(CAPTION AND TITLE OMITTED)

ANNOUNCEMENT OF TERMINATION OF PETITIONERS' PROOFS.

COME NOW the petitioners in the above entitled

action, and referring to the resolution of this Honorable Court of January 17th, 1924, respectfully advise the Court that they have terminated their proofs, and that they will not offer the statistics which it is claimed are in the courts of preparation by the Office of the Collector of Internal Revenue for the following reasons:

1. That the amended motion of petitioners of July 6th, 1923, requested that the Court direct the Collector of Internal Revenue to furnish to petitioners the following data:

> (1) The names and addresses of all Chinese merchants, companies and corporations engaged in business in the Philippine Islands.
>
> (2) The amount of sales tax paid each year by each merchant, company and corporation (Chinese) for the years of 1918 and 1922.
>
> (3) The amount of income tax paid by each Chinese merchant, company, and corporation for each year for the years 1918 and 1922.
>
> (4) The total amount of penalties paid by Chinese merchants, companies and corporations for each year for the years 1918 and 1922."

That the order of this Honorable Court of July 12, 1923, directed the said Collector of Internal Revenue to furnish petitioners information as to "the

total amount of the sales tax paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922," and "the total amount of penalties paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922"; that by reason of the denial by this Honorable Court of that part of the motion of petitioners requesting that the Collector of Internal Revenue be directed to furnish statistics as to "the names and addresses of all Chinese merchants, companies and corporations engaged in business in the Philippine Islands" and "the amount of sales and income tax paid by each merchant, company and corporation (Chinese) for the years 1918 and 1922," the re-remaining information or statistics required by said order of July 12, 1923, would be of little or no value to petitioners or to the Court, particularly for the reason that by the omission of the names of such merchants, companies and corporations, and of the amount of sales and income tax and penalty paid by each, your petitioners have no means of checking up or verifying the correctness of any statistics which might be furnished by the Collector of Internal Revenue in conformity with said order.

2. The Acting Collector of Internal Revenue Juan Posadas testified at the last hearing that the said statistics required by the order of this Honorable Court of July 12, 1923, would probably be furnished about the end of March of this year; that the presentation of said statistics, even if furnished by the end of March, would result in postponing the hearing of the case until after the vacation

period of the Court, when some of the magistrates of the Court will probably be absent from the Islands, and the presentation of such statistics, if believed by the petitioners to be incorrect, might lead to the necessity of offering much additional proofs.

For the reasons stated, your petitioners waive the right to present such statistics and announce the termination of their proofs.

Manila, P. I., January 28, 1924.

Respectfully submitted,

GABRIEL LA-O,
Palma & Leuterio, and
GIBBS & McDONOUGH,

By (Sgd.) A. D. GIBBS,,
Attorneys for Petitioners,
302 Roxas Bldg., Manila.

On the 31st day of January, 1924, the petitioners filed the following objections and motion to strike:

(CAPTION AND TITLE OMITTED)
OBJECTIONS AND MOTION TO STRIKE

COME NOW the petitioners and object to the presentation and filing of the certificates of the Acting Collector of Internal Revenue marked Exhibits "X" and "X-1" and move that the same be rejected and stricken from the record for the following reasons:

1. That the amended motion of petitioners of July 6th, 1923 requested that the Court direct the Collector of Internal Revenue to furnish to petitioner the following data:

"(1) The names and addresses of all Chinese merchants, companies and corporations engaged in business in the Philippine Islands.

(2) The amount of sales tax paid each year by each merchant, company and corporation (Chinese) for the years 1918 and 1922.

(3) The amount of income tax paid by each Chinese merchant, company, and corporation for each year for the years 1918 and 1922.

(4) The total amount of penalties paid by Chinese merchants, companies and corporations for each year for the years 1918 1922."

That the order of this Honorable Court of July 12, 1923, directed the said Collector of Internal Revenue to furnish petitioners information only as to "the total amount of sales tax paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922, the total amount of the income tax paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922, and the total amount of the penalties paid by all of the Chinese merchants, companies and corporations for the years 1918 and 1922."

That counsel for petitioners at the time of presenting said motion of July 6, 1923, believed and acted upon the assumption that the petitioners and themselves in representation of all the Chinese merchants had the power to authorize the divulgence

by way of proof on the part of said merchants of the amount of sales tax and income tax paid by each of them.

That on the 11th of July, 1923, the respondent Collector of Internal Revenue objected to furnishing the information requested by petitioners, alleging among other reasons that if furnished, it would not be correct, by reason of the fact that there are many Filipinos doing business under Chinese names and that there are Chinese with Christian names, and that there are many Chinese with Christian operating under company or corporation names which are not Chinese, and that there are many Filipino companies and corporations in which Chinese capital is invested.

That due to the denial by this Honorable Court of that part of petitioners' amended motion of July 6, 1923, requesting that the names of the Chinese merchants, companies and corporations and the amount of sales tax and penalty paid by each be given, on the ground that it would be in violation of the provisions of the Administrative Code prohibiting the divulgence of such information, counsel for petitioners in their motion of July 13, 1923, requested that the respondent Collector of Internal Revenue be required to furnish to petitioners the names and addresses of all Chinese merchants in the Philippine Islands, in order that their written consent might be obtained to the divulgence of such information; that in anticipation of the granting of said motion requesting that the names and addresses of each of the Chinese merchants be furnished,

petitioners actually obtained at considerable expense, the written consent to the divulgence of such information by all the Chinese merchants of the City of Manila; that the purpose of requesting the names and amount of taxes and penalties paid by each Chinese merchant or merchant supposed to be Chinese, was to enable the petitioners and the Court to check up and verify the information.

That notwithstanding the fact that the objections filed by the respondent Collector demonstrated the impossibility of furnishing accurate information as to the total amount of sales tax, income tax and penalties paid by Chinese merchants and by merchants of other nationalities, this Honorable Court denied the motion of petitioners requesting the names and addresses of the Chinese merchants for the purpose aforesaid, and left in force its order of July 12, 1923, requiring that the respondent Collector furnish information as to such totals, without furnishing the names of the merchants as a means of verifying the truth or falsity of such information.

2. That at the last hearing before the clerk of this Honorable Court on the 8th day of January, 1924, the respondent Collector of Internal Revenue, upon being interrogated as to when the compiling of the information ordered by this Court would be finished, replied that he was making an effort to complete that information before the end of March, 1924.

3. That by reason of the statement of the respondent Collector that the information would not

be forth coming until on or about the end of March, 1924, and that the delay in closing the case until that time would result in postponing the final hearing thereof until after the vacation period of this Honorable Court and until some of the magistrates of this Honorable Court would probably be absent on vacation, and by reason of the further fact that petitioners realized that the totals required by the order of July 12, 1923, of this Honorable Court would necessarily be wholly unreliable and not subject to verification, counsel for the petitioners by a writing prepared and served on respondents and filed on January 28, 1924, announced the termination of petitioners' proofs and waived the presentation of the information required of the respondent Collector of Internal Revenue by said order of July 12, 1923, for the reasons heretofore stated.

4. That notwithstanding the declaration under oath of the respondent Collector of Internal Revenue to the effect in substance that it would be impossible to finish the information required by the order of this Honorable Court of July 12, 1923, before about the end of March, 1924, immediately after the serving and filing of said announcement by counsel for petitioners of the termination of their proofs, the respondent Collector filed with the Court the two certificates marked Exhibits "X" and "X-1", purporting to give the sales taxes and penalties paid by Chinese merchants and merchants other than Chinese for the years 1918 and 1922, and the income taxes paid by Chinese and by persons other than Chinese for the same years.

5. That the presentation of said certificates the day following the announcement by petitioners of the termination of their proofs clearly demonstrates that the respondent Collector withheld said information either for the purpose of avoiding subjecting himself to cross-examination with reference thereto by waiting until petitioners had closed their proofs, or for the purpose of postponing the final hearing of the case until some of the magistrates of the Court should be absent on vacation, or for both purposes.

6. That petitioners are convinced that the data contained in said certificates is incomplete and incorrect, in that they show that the Chinese merchants of the Philippine Islands paid but 39% of the total sales tax collected for that year, and that petitioners will be able to demonstrate the falsity of such data by cross-examination of said respondent Collector, and particularly if the said Collector be required to present the particulars from which said data was obtained; that in order to have obtained accurate information, even as to the amount of taxes paid by persons having Chinese names, the respondent Collector or his employees must have compiled information as to the names and amount of tax paid by each of said merchants; that the furnishing of said names and taxes paid by each of said merchants to petitioners, after obtaining their written consent thereto, would enable petitioners to verify the falsity or correctness of said information.

7. That the data requested by petitioners as

emasculated by the order of this Court of July 12, 1923, and as furnished by the respondent Collector in said certificates, is of no probatory value whatever, and particularly so if the same be admitted without cross-examination of the respondent Collector; that petitioners at no time requested the information as thus emasculated and do not desire to present the same as proof.

8. That both the petitioners and respondents had rested and closed their proofs previous to the presentation of said certificates.

9. That the allegations of the original and amended petitions to the effect that the aggregate business transacted by the Chinese merchants represents more than 60% of the total business done by all the merchants in the Philippine Islands, and that said Chinese merchants are now and for many years last past have been paying more than 60% of the taxes levied on the total mercantile transactions of the Philippine Islands were and are based exclusively upon a statement furnished by the Collector of Internal Revenue and appearing at page 7 of the printed bill of exceptions in the case of Young et al vs. James J. Rafferty, Collector of Internal Revenue, R. G. No. 10951 of this Honorable Court, and which statement has been offered in evidence and purports to give the number of Chinese merchants and the amount of business transacted by them as compared with the other merchants in the Philippine Islands; that if, as a matter of fact, the certificates of the respondent Collector which were filed on the 29th day of January, 1924, are even ap-

proximately correct, then the statement furnished by the said Collector as to the proportion of business transacted by Chinese merchants for the year 1912 in said case of Young vs. Rafferty was either incorrect, or there has been an abnormal increase since the year 1912 of the business transacted by merchants of nationalities other than Chinese, and for that reason, if the said certificates of the respondent Collector be admitted as evidence, it will be necessary for petitioners to amend their petition so as to show the correct proportion of business transacted by Chinese merchants in the Philippine Islands.

WHEREFORE, petitioners pray:

(a) That the said certificates be rejected as proof and stricken from the record, or

(b) That petitioners be permitted to withdraw their announcement of the termination of their proofs; that the hearing of the case be reopened for the purpose of cross-examining the respondent Collector as to the contents of said certificates; that the respondent Collector be required to furnish the names and addresses of the Chinese merchants, the amounts of whose taxes have been included in the totals shown in said certificates; that counsel for petitioners be given a reasonable time within which to obtain the written consent of said Chinese merchants to the disclosure of the taxes and penalties paid by each of them, and that upon obtaining such written consent, petitioners be furnished a statement of the amount of taxes and penalties paid by each of said Chinese merchants, companies, and

corporations for presentation as proof, and that petitioners be permitted to amend their amended petition in the event that the development of additional proofs upon the reopening of said hearing may, in their opinion, require the same.

Manila, P. I.,
January 31, 1924.

Respectfully submitted,

GABRIEL LA-O, PALMA & LEUTERIO
and
GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS,
Attorneys for Petitioners,
301 Roxas Bldg., Manila, P. I.

On February 2, 1924, counsel for respondents presented the following:

(CAPTION AND TITLE OMITTED)

OBJECTION TO THE MOTION TO STRIKE EXHIBITS "X" AND "X-1"

COME NOW the respondents, thru the undersigned Assistant Fiscal, and oppose the pretension of the petitioners to have Exhibits "X" and "X-1" stricken from the record of this cause. In arguing our objection, we desire to recall that on July 6, 1923, the petitioners presented an amended motion asking that this Court require the Collector of Internal Revenue to submit, *for the purpose of using them as proof*, the following data: The names, addresses and amounts of sales tax, income tax and

penalties paid by Chinese merchants, companies and corporations during the years 1918 and 1922. To this motion, the respondents objected for the reason, among others, that to reveal such data would constitute a violation of the law and because of the difficulties which the Bureau of Internal Revenue would encounter in preparing them. This Supreme Court, recognizing that by the publication of all the data asked for by the petitioners the law would be violated only ordered the Collector of Internal Revenue to prepare certain statistics indicative of the total amounts of taxes and penalties paid by Chinese companies, corporations and merchants of the Philippines during the years 1918 and 1922.

The petitioners then insisted in their petition and wanted to amplify it so that the statistics to be prepared by the Bureau of Internal Revenue would include also the years 1919, 1920 and 1921. This new petition was denied by this Honorable Court by resolution of August 16, 1923, and since then until January 8, 1924, when the last session was held before the Clerk. Mr. Vicente Albert, who was commissioned to receive the proofs in this case, and when the respondents reserved the right to present their rebuttal evidence until after the Collector of Internal Revenue had submitted said statistics, the petitioners never pretended that such statistics, to be presented in accordance with the order of this Court, were useless and of no value, but on the contrary asked for the same on various occasions and allowed the Collector of Internal Revenue to employ his personnel during several months in order to prepare them.

The present attitude of the petitioners confirms our opposition to their motion asking for the preparation of said statistics, that is to say, that said motion had no other object or purpose but to delay the termination of the present cause, an object or purpose which cannot cover up the series of gratuitous and unjustified affirmations which counsel for the petitioners make against the Collector of Internal Revenue in their motion to strike.

In this connection, it must not be forgotten that the data contained in Exhibits "X" and "X-1", being completely independent facts, as we shall demonstrate in due time, cannot affect the allegation contained in the original complaint and in the last amended complaint that more than sixty per cent of the entire commerce of the Islands is in the hands of Chinese merchants, for this allegation was expressly admitted in our answer and if desired we could admit it again. This being so, the petitioners, in asking for the statistics in question, could not, therefore, have the object of proving a fact which they they do not need to prove by virtue of the admission of the respondents. Hence, we were led to believe, as we do believe, that their purpose was no other than to delay the case. But once the statistics contained in Exhibits "X" and "X-I" were prepared the same have probatory value, although with regard to some other point, as we shall also demonstrate in due time, and as the petitioners ought to know when they tenaciously oppose their admission.

Upon arriving at this point, we believe it is unnecessary for us to say that the respondents never had the least intention to deprive the petitioners of

any opportunity to examine the Collector of Internal Revenue, who, notwithstanding he is one of the respondents in this case, has no pesronal interest whatever herein and has in his favor the presumption established by paragraph 14 of article 334 of the Code of Civil Procedure, which should prevail over all the more insinuation which is made against him in the motion to strike. The Collector of Internal Revenue has always been and is disposed to answer all the questions (*but not cross-examinations*, because a party cannot cross-examine a witness which he presents in relation with the preparation of certain data which he has asked for), which counsel for the petitioners might want to make provided that the examination be limited solely to the preparation of said statistics, for otherwise the case would be interminable, and provided that such examination would not necessitate the continuance of the hearing of this case which the Honorable Supreme Court has set for March 23rd of the present year.

In view of the foregoing considerations, we object to the motion to strike made by counsel for the petitioners, although we manifest that Mr. Juan Posadas, Jr., is disposed to submit himself to examination by the petitioners provided that the same is related to the preparation of the statistics "X" and "X-1" and provided that such examination would not result in the continuance of the hearing of this case set for March 3, 1924.

Manila, February 2, 1924.

ALFONSO FELIX,
Assistant Fiscal.

On the 4th day of February, 1924, the Supreme Court issued the following order:

> "The rollo of case Yu Cong Eng et al. *vs.* W. Trinidad etc. et al., R. G. No. 20479, having been reported for consideration of several motions filed since the order of this Court of January 16th, it is ordered that the statement of the petitioners that they waive the right to present the statistics prepared by the Collector of Internal Revenue and announce the termination of their proofs be noted and approved. Mr. Justice Johnson did not take part."

On the 8th day of February, 1924, the petitioners filed the following motion to clarify:

(CAPTION AND TITLE OMITTED.)

MOTION TO CLARIFY

COME NOW your petitioners and respectfully ask that the order of this Honorable Court of February 5, 1924, be clarified so as to show whether the motion of petitioners of January 31, 1924, to reject and strike from the record the certificates of the respondent Collector (Exhibits X and X-1) was sustained or denied.

While it may be inferentially deduced from the order of February 5, 1924, approving petitioners' waiver of the right to present the statistics which are the subject of the certificates and the announcement of the termination of their proofs, that this Honorable Court intended to grant petitioners' mo-

tion to strike, nevertheless, it may be argued by the respondents on the other hand with considerable reason that the Court only passed upon petitioners' announcement of the termination of their proofs; that if the Court had intended to pass upon the motion to strike and to reject the certificates as proof it would have said so and that it may have been the Court's intention to accept the certificates as proof of the respondents notwithstanding the waiver by petitioners of their right to present the statistics contained in the certificates and notwithstanding the previous termination by respondents of their proofs.

The undersigned consider it essential to the protection of the interests of their clients to have it clearly decided whether the certificates are to be considered in evidence or not for the reasons which are fully set out in their objections and motion to strike of January 31, 1924.

Manila, P. I., February 7, 1924.

Respectfully submitted,
GABRIEL LA-O, PALMA & LEUTERIO, and
GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS,
Attorneys for Petitioners,
302 Roxas Bldg., Manila.

On the 11th day of February, 1924, the Supreme Court issued the following order:

"The Clerk having reported to the Court the motion to clarify filed by attorneys for the petitioners in the case of Yu Cong Eng et al. *vs.* W. Trinidad, No. 20479, together with the

previous motions presented by the petitioners waiving the right to present statistics being prepared by the Collector of Internal Revenue and announcing the termination of their proofs, and praying that the certificate be rejected as proof and stricken from the record, in relation with the resolution of this Court of February 5, 1924, ordering that the statement of the petitioners that they waive the right to present statistics prepared by the Collector of Internal Revenue and announcing the termination of their proofs be noted and approved, the Court said: That the petitioners having announced that they waive the right to present statistics and the Court having noted and approved this statement, it was unnecessary to act on the second motion for the reason that the statistics having been withdrawn with the permission of the Court, there remained nothing to strike from the record. Mr. Justice Johnson did not take part."

On February 13, 1924, counsel for respondents presented the following:

(CAPTION AND TITLE OMITTED.)

MOTION

COMES NOW the undersigned Assistant Fiscal in the name and representation of the respondents, and respectfully calls the attention of the Honorable Supreme Court to the fact that the statistics contained in Exhibits "X" and "X-1" have been pre-

pared and presented in accordance with the resolution of this Court of July 11, 1923, in which it ordered the Collector of Internal Revenue to prepare them for the information of the petitioners *as well as of this Honorable Court.*

In view of the order, and as the undersigned counsel has manifested in previous writings, the Collector of Internal Revenue assigned, for several months, part of his personnel to comply with said resolution and prepare and submit said Exhibits, and if, upon petition of the petitioners who see that the contents of the same may prejudice them, said Exhibits be striken from the record of this cause, it would result that this Supreme Court would not only revoke its former resolution but would also render useless a very great task which was imposed upon the Bureau of Internal Revenue against the tenacious opposition of its Collector.

For these reasons and in view of the resolution of this Court of February 11, 1924, the undersigned counsel respectfully asks this Honorable Court to permit him to present, as he hereby presents, said Exhibits "X" and "X-1" as proof of the respondents.

Manila, February 13, 1924.

ALFONSO FELIX,
Assistant Fiscal,

Attorney for Respondents.

On February 13, 1924, counsel for respondents presented the following:

(CAPTION AND TITLE OMITTED.)

EXCEPTION

COMES NOW the undersigned Assistant Fiscal in the name and representation of the respondents in this case and to the Honorable Supreme Court respectfully begs leave to file, as he does hereby file, his exception to the resolution of this Court dated February 5, 1924, as interpreted and made clear by the resolution dated February 11, 1924.

Manila, February 13, 1924.

ALFONSO FELIX,
Assistant Fiscal
Attorney for Respondents.

On the 15th day of February, 1924, the petitioners filed the following objections to motion of respondents to be permitted to present Exhibits "X" and "X-1" as their own proof:

(Caption and Title Omitted.)

OBJECTIONS TO MOTION OF RESPONDENTS TO BE PERMITTED TO PRESENT EXHIBITS "X" AND "X-1" AS THEIR OWN PROOF.

Petitioners object to the motion of respondents for the same reasons set forth in their "Announcement of termination of petitioners proofs" of January 28, 1923 and in their "Objections and motion to strike" of January 21, 1924.

Petitioners further object to the presentation of said exhibits for the reason that the respondents

closed the presentation of proofs on their part without reservation of the right to present these exhibits or any other proofs, and that said exhibits are not in the nature of rebuttal evidence and do not tend to support any of the allegations of the answer of respondents.

The admission of said exhibits will make it necessary for petitioners to ask for the reopening of the trial of the case.

Manila, P. I.
February 15, 1924.

Respectfully submitted,

GABRIEL LA-O, PALMA & LEUTERIO,
and
GIBBS & MCDONOUGH,
By (Sgd.) A. D. GIBBS,
Attorneys for Petitioners,
302 Roxas Bldg.,
Manila, P. I.

On February 16, 1924, counsel for respondents presented the following:

(Caption and Title Omitted.)

REPLY TO THE OBJECTION OF PETITIONERS TO THE ADMISSION OF EXHIBITS "X" AND "X-1" AS EVIDENCE OF THE RESPONDENTS

It seems that all the objection of the petitioners to the admission in evidence of Exhibits "X" and

"X-1" is based upon the fact that the petitioners, as well as the respondents, have rested, that the undersigned did not reserve the right to present said exhibits, and that the latter are not proper rebuttal evidence and do not tend to prove the allegations of the answer of the respondents.

Of course, we confess that we have not reserved the right to present said exhibits, but we could not have reserved such right after the announcement made by the opposing counsel that he would present them as his own proof. But even without taking this fact into consideration, and in view of the special circumstances of the present cause, the undersigned believes and maintains that even after the termination of the presentation of the proofs, he can, with leave of this Court, and especially before the case is heard on the merits, present as additional proof said Exhibits "X" and "X-1," for, as we shall hereinafter demonstrate, said exhibits tend to disprove some allegations of the petition and to support some allegations of our answer. And in order that the statistics contained in said exhibits may be better appreciated, we have not the least objection, if the petitioners so desire, to calling Mr. Posadas before the 3rd of March next, for which the trial of this cause has been set, to testify with regard to the manner in which said statistics were prepared.

Believing that no valid reason may be adduced in opposition to our motion of February 13, 1922, we maintain that it is a matter of justice, and,

therefore, we ask that Exhibit "X" and "X-1" be admitted as proof of the respondents.

Manila, February 16, 1924.

ALFONSO FELIX,
Assistant Fiscal,
Attorney for Respondents.

On February 15, 1924, the Court issued the following orders:

> "Considering the motion of the attorney for the respondents in case No. 20479, Yu Cong Eng et al. *vs.* W. Trinidad et al., excepting to the resolution of this Court of February 5, 1924, as construed and clarified by its resolution of February 11, 1924, and praying for the reasons therein stated, that he be permitted to present Exhibits "X" and "X-1" as evidence for the respondents, the Court ordered that the exception be noted and the MOTION be DENIED. Mr. Justice Johnson did not take part."

On February 19, 1924, counsel for respondents presented the following:

(Caption and Title Omitted.)

EXCEPTION

COMES NOW the undersigned Assistant Fiscal in the name and representation of the respondents in this case and to the Honorable Supreme Court respectfully begs leave to file, as he hereby files, his exception to the resolution of this Court dated

February 15, 1924 denying the motion in which the undersigned asks that Exhibits "X" and "X-1" be admitted as proof of the respondents.

Manila, February 18, 1924.

ALFONSO FELIX,
Assistant Fiscal,
Attorney for Respondents.

On February 20, 1924, counsel for respondents presented the following:

(Caption and Title Omitted)

NEW ANSWER

COMES NOW the undersigned Fiscal of the City of Manila in the name and representation of the respondents in the above entitled cause, and, without renouncing or desisting from the demurrer which he has interposed against the amended petition of September 15, 1923, represents, with leave of this Court, that, in view of the special procedure followed in this cause, the respondents desire to answer said amended petition. To this effect, and in order not to make more voluminous the record of this case, the undersigned reproduces herein the same special defense alleged in our first answer, save that actually Mr. Juan Posadas, Jr., is the Collector of Internal Revenue of the Government of the Philippine Islands, and with the understanding that our general and specific denial comprehends

and is extended to the new allegations and exhibits of the amended petition,

Manila, February 19, 1924.

E. P. REVILLA,
City Fiscal,
Attorney for Respondents.

UNITED STATES OF AMERICA)
PHILIPPINE ISLANDS) s. s.
CITY OF MANILA)

I, E. P. Revilla, Fiscal of the City of Manila, and one of the respondents in the above entitled cause, after being duly sworn, declare that all that is alleged in the preceding answer and all that is in it reproduced of our answer dated April 15, 1923, is true according to my best knowledge and belief.

Manila, February 19, 1924.

E. P. REVILLA,
City Fiscal,
Attorney for Respondents.

Subscribed and sworn to before me this 19th day of February, 1924, in the City of Manila, Philippine Islands. Affiant exhibited to me his Cedula No. F-17553, issued January 31, 1924.

Clerk, Supreme Court of the
Philippine Islands.

On the 26th day of February, 1924, the Supreme Court issued the following order:

> "Considering the sundry motions filed by the attorney for the respondents in case No.

20479, Yu Cong Eng et al. *vs.* W. Trinidad, et al., the Court ordered: (1) that the exception to the order of this Court of February 15, 1924, denying the respondents' petition that the Exhibits X and X-1 be admitted as their own evidence, be noted; (2) that the answer to the petitioners' objection be attached to the record; and (3) that the new answer of the respondents be admitted. Justice Johnson did not take part."

On the 1st day of March, 1924, the petitioners filed the following motion to have objections ruled on and exceptions noted in the event of adverse rulings:

(CAPTION AND TITLE OMITTED.)

MOTION TO HAVE OBJECTIONS RULED ON AND EXCEPTIONS NOTED IN THE EVENT OF ADVERSE RULINGS

COME NOW the petitioners and move the Court to decide the objections to exhibits of respondents recorded at pages 816 to 828 at the time of the decision of the case and in the event of an adverse decision to allow exceptions upon each adverse ruling.

Among the most manifestly inadmissible evidence of respondents is Exhibit "3" purporting to be a certificate of the respondent Collector in which he attempts to reflect discredit upon the Chinese accountants by statements which are not the subject of proper official certificates and about which the author of the certificates had no personal knowledge,

thereby attempting to introduce into the record without cross-examination statements to which the author could not have testified as a witness.

Exhibits "4" and "5" are similar to Exhibit "3" and should be excluded for the same reasons.

Exhibits "6-a" to "6-o", inclusive, in connection with the testimony of Benito Leuterio; Exhibits "7-a" to "7-o", inclusive, in connection with the testimony of Amado del Rosario and Exhibit "8" in connection with the testimony of H. A. Bordner were all objected to except the portions thereof which prove that a very few of the pupils mentioned had taken bookkeeping courses, the remainder of the pupils mentioned having taken common school or high school courses in Arithmetic, or having in the case of Civil Service examinations having passed tests in Arithmetic. These tables and certificates are wholly immaterial and misleading in so far as they refer to a few bookkeeping students.

Exhibits "9-a" to "9-k" offered in connection with the testimony of Vicente Fabella upon the subject of the standing of a Philippine college are wholly immaterial and an inexcusable encumbrance of the record, the printing of which in the event of an appeal to the Supreme Court of the United States would cost several hundred dollars and at the same time thereby delay the perfection of an appeal.

Exhibit "11" is another useless encumbrance of the record immaterial, incompetent and self-serving.

Exhibit "12" is a large printed pamphlet pur-

porting to contain some foreign law on the subject of bookkeeping. It is immaterial because it bears no resemblance to Act 2972 and should be excluded because not properly attested as required by Section 301 of our Code of Civil Procedure. It is principally objectionable because of its encumbrances of the record.

> Note:—In commenting upon this Exhibit we do not have it before us and are therefore not certain as to whether it be authenticated as required by Section 301 of the Code of Civil Procedure.

Exhibits "12-a" to "12-e" are alleged excerpts of foreign laws which are immaterial because not similar to Act 2972 and are inadmissible because they do not purport to be all of the law on the subject and because they are not attested as required by Section 301 of the Code of Civil Procedure. If we recall correctly they are certified to by Dr. Pardo de Tavera as having been taken from books in the Philippine Library and Museum, whereas section 301 of the Code of Civil Procedure requires the attestation to be made by the officer of the foreign country having charge of the original of the law and to bear the seal of the foreign state or country. Even if the laws of these foreign countries had constitutional provisions similar to our own and could serve as a criterion for the United States, they are so dissimilar as to be wholly immaterial and we are availing ourselves of these objections principally to avoid an undue encumbrance of the record.

"13-a" to "13-k" represent the number of invoices which a German firm of prospective bookkeepers for Chinese pretend they were able to obtain from the three or four thousand Chinese merchants of Manila. These invoices were not identified as having been written by any particular Chinese merchant or person, and there was nothing beyond the word of the witness Riepe to show that he himself did not have the invoices prepared. The failure to give the name of the person who prepared each invoice rendered it impossible to contradict the witness Riepe had petitioners desired to do so. Inasmuch as the writing of these invoices—many of the words of which are misspelled in no manner show the authors qualified to keep or understand books of account in any of the permitted languages, our objection is made principally to avoid encumbering the record which will have to be printed for the Supreme Court of the United States.

Manila, P. I., March 1, 1924.

Respectfully submitted,

PALMA & LEUTERIO, and
GABRIEL LA-O,
By (Sgd.) A. D. GIBBS,
Attorneys for Petitioners,

GIBBS & McDONOUGH,
302 Roxas Bldg., Manila.

On the 18th day of March, 1924, the Supreme Court issued the following order:

"The Court being unable to reach a decision by the vote required by law in the case of Yu Cong Eng *et al. vs.* W. Trinidad, *et al.*, No. 20479, it is reset for the second Monday in July, 1924, at 9 a. m., when the parties may, if they so desire, present their arguments to the members of the Court, including Mr. Justice Villamor now in vacation. Mr. Justice Johnson did not take part."

On the 10th day of October, 1924, the Supreme Court issued the following order:

(Caption and Title Omitted)

"I hereby certify that by virtue of a petition duly filed in this Court in the above entitled case the petitioner Yu Cong Eng was granted on this date permission by the Hon. George A. Malcolm, Associate Justice of the Supreme Court, to leave the Philippine Islands for China on a business trip which will last approximately four (4) months.

In witness whereof, I have hereunto signed my name and affixed the seal of this Court this tenth day of October, 1924.

(Sgd.) AURELIO A. TORRES,
Acting Clerk, Supreme Court."

On the 3rd day of December, 1924, the parties filed the following:

(Caption and Title Omitted)

MOTION

The undersigned respectfully move the Court to approve the accompanying stipulation and set the case for re-hearing in accordance therewith.

Manila, P. I., December 2nd, 1924.

GABRIEL LA O,
PALMA & LEUTERIO, and
GIBBS & McDONOUGH,
By A. D. GIBBS,
Attorneys for Petitioners.

. . . . . .

CITY FISCAL
Attorney for Respondents.

On the 3rd of December, 1924, the parties entered into the following:

(Caption and Title Omitted)

STIPULATION

It is hereby stipulated by and between counsel for petitioners and respondents that with the approval of this Honorable Court this case shall be resubmitted on printed briefs to be filed by both parties on or before the 7th day of January, 1925.

Manila, P. I., December 2nd, 1924.

GABRIEL LA O,
PALMA & LEUTERIO, and
GIBBS & McDONOUGH,
By A. D. GIBBS,
Attorneys for Petitioners.

. . . . . .

CITY FISCAL
Attorney for Respondents.

On the 4th day of December, 1924, the Supreme Court issued the following order:

> "Considering the stipulation filed by counsel for both parties in case No. 20479, Yu Cong Eng et al *vs.* W. Trinidad, etc., et al., wherein it is agreed between them that said case be resubmitted on printed briefs to be filed by both parties on or before the 7th day of January, 1925, STIPULATION APPROVED. Mr. Justice Johnson did not take part."

On the 6th day of January, 1925, respondents filed their printed brief.

On February 5, 1925, the Supreme Court rendered the following:

YU CONG ENG, *et al.*, *vs.* W. TRINIDAD, *et al.*,

No. 20479.

1. CONSTITUTIONAL LAW; CONSTITUTIONALITY OF ACT NO. 2972, THE CHINESE BOOKKEEPING LAW.—Act No. 2972, the Chinese Bookkeeping Law, providing that "It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect," is valid and constitutional.

2. ID.; ID.; DETERMINATION OF THE CONSTITUTIONALITY OF A LAW IN ORIGINAL PROCEEDINGS IN THE APPELLATE COURT.—Equity has power, to be exercised in proper cases, to restrain criminal prosecutions under unconstitutional statutes, and to grant preliminary injunctions where the constitutionality of a penal law is doubtful and fairly debatable, and permanent injunctions where the laws are held invalid. The remedy by injunction to restrain the enforcement of unconstitutional statutes or abuse of authority under a valid statute, is limited to cases where property rights are threatened with irreparable injury or where persons would be subjected to a multiplicity of suits.

3. ID.; ID.; ID.—As a general rule, the question of constitutionality must be raised in the lower court and that court must be given an opportunity to pass upon the question before it may be presented to the appellate court for resolution. (Cadwallader-Gibson *vs.* Del Rosario, 1923, 26 Phil., 192.) Occasionally under a recently enacted statute affecting numerous persons and extensive property rights liable to give rise to a multiplicity of suits and numerous prosecutions, it is proper, right at the

threshold of a prosecution, to have the validity of a given law determined in the interest of the accused and of the public, so as to permit of the orderly administration of justice. (Young *vs.* Rafferty, 1916, 33 Phil., 536; Kwong Sing *vs.* City of Manila, 1920, 41 Phil., 103; Dimayuga and Fajardo *vs.* Fernandez et al, 1922, 43 Phil., 304.)

4. ID.; ID.; ID.—Inasmuch as the property and personal rights of nearly twelve thousand merchants are effected by these proceedings, and inasmuch as Act No. 2972 is a new law not yet interpreted by the courts, in the interest of the public welfare and for the advancement of public policy, the question of the validity of Act No. 1972, is determined in these proceedings in prohibition and injunction.

5. ID.; ID.; RULES OF CONSTITUTIONAL CONSTRUCTION.—The presumption is always in favor of constitutionality. To doubt is to sustain. (Weems *vs.* United States, 1910, 217 U. S., 378; Adkins *vs.* Children's Hospital 1923, U. S. Sup. Ct. Adv. Ops., 440).

6. ID.; ID.; ID.—A law should be so construed if possible as to avoid conflict with the constitution, although such construction may not be the most ob-

vious or natural one. When an Act is susceptible of two or more constructions, one of which will maintain and the others destroy it, the courts will always adopt the former. (U. S. *vs.* Coombs, 1838, 37 Peters, 72; Gremada County Supervisors *vs.* Brogden, 1884, 112 U. S., 261; *In re* Guariña, 1913, 24 Phil, 37; Andres Fuentes *vs.* Director of Prisons, No. 22449.)

7. ID.; ID.; ID.; JUDICIAL CONSTRUCTION OF ACT NO. 2972.—Act No. 2972 admits of three constructions. The first construction a literal application of the law, and the second construction permitting of the keeping of duplicate sets of account books by merchants, would probably result in holding the law unconstitutional. But the third construction to the effect that the law only intended to require the keeping of such books as were necessary in order to facilitate governmental inspection for taxation purposes, permits the courts to sustain the law. This is a practical judicial construction of a law where the validity of this law is in issue, which gives to the law a meaning accomplishing everything needed by the Government for taxation purposes, without being unduly oppressive on the

individual and which permits the courts to uphold the law.

8. ID.; ID.; ID.—Act No. 2972 is a fiscal measure intended to facilitate the work of the Government agents and to prevent fraud in the return of the merchants, in conformity with the sales tax and the income tax. Conceded that the Chinese handle sixty per cent. of the aggregate business of the Philippines, approximate equality in taxation demands that they pay something like the same proportion in taxes for the support of the State.

9. ID.; ID.; ID.; ID.—Act No. 2972 is construed as meaning that any person, company, partnership, or corporation engaged in commerce, industry, or any other activity for the purpose of profit in the Philippine Islands, shall keep its account books, consisting of sales books and other records and returns required for taxation purposes by the regulations of the Bureau of Internal Revenue, in effect when this action was begun, in English, Spanish, or a local dialect.

10. ID.; ID.; POLICE POWER AND POWER OF TAXATION IN THE PHILIPPINES.—The police power and the power of taxation exist in the Philippine Islands in about the same

form and to the same extent as in a State of the American Union.

11. ID.; ID.; RIGHTS OF THE CHINESE IN THE PHILIPPINES.—The rights of Chinese aliens resident in the Philippines are not less than the rights of American and Philippine citizens. Nor more.

12. ID.; ID.; THE LANGUAGE QUESTION IN THE PHILIPPINES.—A description of the language situation in the Philippines discloses some of the difficulties which have beset the attempt to hasten the adoption of a common language in the Philippines. The Filipino people have cheerfully imposed upon themselves the burden of acquiring one or more languages other than their native languages. The purpose of their elective representatives in approving Act No. 2972 is to require conformity with governmental policy of a large class of foreign residents, so as to permit of a closer approximation to equality in taxation.

(CAPTION AND TITLE OMITTED.)

DECISION

MALCOLM, *J.*:

The issue in these proceedings is the validity of Act No. 2972 of the Philippine Legislature, popularly known as the Chinese Bookkeeping Law. It is a

question of paramount importance which the record shows, has been laid before this court following the failure of diplomatic negotiations and executive pressure to secure from the local law-making body either the repeal of the law or a modification of its provisions. It is, moreover, a question which, extensive argument and original investigation disclose, stands in the shadowland betwixt constitutionality and unconstitutionality to the solution of which we propose to give careful consideration.

The petitioners are Chinese merchants claiming to represent themselves and all other persons similarly situated and affected, particularly twelve thousand Chinese merchants. The respondents, against whom the petition for prohibition and injunction is directed, are the Collector of Internal Revenue, the Fiscal of the City of Manila, and Honorable Pedro Concepcion, Judge of First Instance of Manila. The allegations of the petition center on the unconstitutionality of Act No. 2972 above mentioned.

To the petition (later amended), a demurrer was interposed by the respondents which met squarely the main issue of constitutionality, while raising, in addition, the preliminary question of jurisdiction. Following oral argument, the court overruled respondents' demurrer and required them to answer. To respondents' answer to the amended petition, petitioners presented a demurrer.

In order that the court might be assisted by having before it all possible facts and circumstances which might aid it in arriving at a correct conclusion, the parties were permitted to offer evidence to substan-

tiate their claims. Nearly one thousand pages of testimony, more or less relevant to the issue, have resulted. While all of this testimony has been gone over with painstaking care, it is not feasible for the court to encumber the decision with rulings on the multitudinous objections which have perfunctorily been raised before the commissioner.

Before passing to our principal task, it is necessary to say something about the preliminary point of jurisdiction argued by counsel, relating to the propriety of the constitutional question being decided in original proceedings in prohibition.

The Supreme Court is granted both concurrent jurisdiction in prohibition with Courts of First Instance over inferior tribunals or persons, and original jurisdiction over Courts of First Instance when such courts are exercising functions without or in excess of their jurisdiction. (Code of Civil Procedure, sec. 516.) It is a jurisdiction, however, which must be exercised circumspectly, for otherwise the court would usurp the powers of Judges of First Instance. The law having given to Judges of First Instance jurisdiction to try criminal cases, the appellate court should not meddle with the initiation or trial of such cases, except for good reasons, and should not permit the substitution of extraordinary proceedings for appeal.

As before held by this court, and by the Federal courts, equity has power, to be exercised in proper cases, to restrain criminal prosecutions under unconstitutional statutes, and to grant preliminary injunctions where the constitutionality of a given

penal law is doubtful and fairly debatable, and permanent injunctions where the laws are held invalid. The remedy by injunction to restrain the enforcement of unconstitutional statutes or abuse of authority under a valid statute, seems to be limited to cases where property rights are threatened with irreparable injury or where persons would be subjected to a multiplicity of suits.

A more complicated question arises, with reference to what stage of a threatened criminal prosecution, an accused person shall have the right to test the validity of a criminal statute by means of original proceedings presented in the appellate court. We believe the correct principle was announced in Cadwallader-Gibson Lumber Company *vs.* Del Rosario (1913, 26 Phil., 192.) In other words, as a general rule, the question of constitutionality must be raised in the lower court and that court must be given an opportunity to pass upon the question before it may be presented to the appellate court for resolution. Yet occasionally, under a recently enacted statute affecting numerous persons and extensive property rights, liable to give rise to a multiplicity of actions and numerous prosecutions, it is proper, right at the threshold of a prosecution, to have the validity of a given law determined in the interest of the accused and of the public, so as to permit of the orderly administration of justice. (*Ex parte* Young, 1908, 209 U. S., 123; Truax *vs.* Raich, 1915, 239 U. S., 33; Wilson *vs.* New, 1917, 243 U. S., 332; Rammer *vs.* Dagenhart, 1918, 247 U. S., 215; International News Service *vs.* Associated Press, 1918, 248

U. S., 215; Weed and Co. *vs.* Lockwood, 1920, 255 U. S., 104; Terrace *vs.* Thompson, 1923, 263 U. S., 197; Young *vs.* Raffetry, 1916, 33 Phil., 556; Kwong Sing *vs.* City of Manila, 1920, 41 Phil., 103; Dimayuga and Fajardo *vs.* Fernandez, et al, 1922, 43 Phil., 304; and Fleischmann, Injunctions Restraining Prosecution Under Unconstitutional Statutes, 9 American Bar Associations Journal, March, 1923, p. 169.)

Inasmuch as the property and personal rights of nearly twelve thousand merchants are affected by these proceedings, and inasmuch as Act No. 2972 is a new law not yet interpreted by the courts, in the interest of the public welfare and for the advancement of public policy, we have determined to overrule the defense of want of jurisdiction in order that we may decide the main issue. We have here an extraordinary situation which calls for a relaxation of the general rule.

We come then to take up the question of the validity of Act 2972. Said Act reads as follows:

> "No. 2972.—AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.
>
> "*Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:*
>
> "SECTION 1. It shall be unlawful for any

person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish, or any local dialect.

"SEC. 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.

"SEC. 3. This Act shall take effect on November first, nineteen hundred and twenty-one.

"Approved, February 21, 1921."

Subsequently, pursuant to the provisions of Act No. 2998, Act No. 2972 was made to take effect on January 1, 1923. But due to the unavailing efforts of the Secretary of War, the present Governor-General and the Chinese community to have Act No. 2972 repealed, so counsel for the petitioners intimates, its enforcement was suspended until the adjournment of the Legislature in February, 1923.

On March 2, 1923, the agents of the Bureau of Internal Revenue, in the exercise of their legitimate functions, inspected the books of account of the Chinese merchant Yu Cong Eng. Upon finding that said books were not kept in accordance with their understandings of the provisions of Act No. 2972, they took possession of the merhant's books and referred the matter to the City Fiscal of Manila for appropriate action.

The City Fiscal, considering that Yu Cong Eng had committed a violation of the law, on March 7, 1923, caused an information to be filed, subscribed and sworn to before the Judge of First Instance Concepcion, thereby giving rise to criminal case No. 25551 of the Court of First Instance of Manila. This information alleged in substance that the accused merchant had kept his books of account "only in Chinese, instead of keeping or causing them to be kept in English, Spanish or any local dialect, thus rendering it difficult for the agents and authorized representatives of the Government of the Philippine Islands and of the City of Manila, to examine and inspect the aforementioned books of account, thereby preventing and hindering the investigation and determination of all the amount that said accused was, is, or will be under obligation to pay for licenses, permits and taxes." A warrant of arrest was issued by the Judge of First Instance before whom the information was filed, and in compliance therewith, the accused merchant, now become the instant petitioner, was arrested.

The antecedents of those proceedings, therefore, do not affect directly any other person except the petitioner Yu Cong Eng who says that he neither reads, writes, nor understands the English or Spanish language or any local dialect, although inferentially affecting all other merchants in a like situation.

To properly appreciate the situation, we must go back a little further into the history of the case and must have before us the applicable provisions of Philippine law.

The sales tax has been in force in the Philippines for a number of years. Our law provides for privilege taxes to be levied on certain businesses and occupations. These percentage taxes on business are payable at the end of each calendar quarter in the amount lawfully due on the business transacted during the past quarter. It is made the duty of every person conducting a business subject to such tax, within the same period as is allowed for the payment of the quarterly installments of the fixed taxes without penalty, to make a true and complete return of the amount of the receipts or earnings of his business during the preceding quarter and pay the tax due thereon. All merchants not specifically exempted must pay a tax of one and one-half per cent on the gross value in money of the commodities, goods, wares and merchandise sold, bartered, exchanged or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of consigned. (Administrative Code, secs. 1453, *et seq.*; Act No. 3065.)

The income tax has also been established here for sometime, first pursuant to an Act of Congress and later pursuant to an Act of the Philippine Legislature (Act No. 2833, as amended by Act No. 2926). The customary returns are required from individuals and corporations. The tax is computed and the assessments are made by the Collector of Internal Revenue and his agents.

The sales tax and the income tax furnish a substantial part of the revenue. Roughly speaking,

about ₱10,000,000 from the sales tax and about ₱2,000,000 from the income tax are secured annually. (Exhibit 13.) Any appreciable leaks in these scources of governmental revenue would be highly undesirable.

At the time the Internal Revenue Law of the Philippine Islands was originally enacted, the Spanish Code of Commerce was in force, and this code still remains the centerpiece of our commercial system, although considerably battered by amendatory laws. The Code of Commerce provides that merchants shall keep: (1) A book of inventories and balances; (2) a day-book; (3) a ledger; (4) a copying book for letters and telegrams; and (5) the other books required by special laws. These books are supposed to be presented by merchants to a justice of the peace for authentication. Merchants may furthermore keep other books that they consider advisable, according to the system of bookkeeping adopted. (Code of Commerce, arts. 33, *et seq.;* Administrative Code, sec. 214; Blanco, *Derecho Mercantil, Tomo 1*, pp. 561, 562.)

The Spanish Code of Commerce, it is thus seen, is silent as are all the codes which follow the French system, regarding the language in which books of account must be kept.

Under the provisions of the Code of Commerce and of the Internal Revenue Law, the Collector of Internal Revenue had authority "to require the keeping of a daily record of sales. No one could say with any certainty what the amount of the tax would be without such data." (Young *vs.* Rafferty, *supra.*)

The Collector of Internal Revenue was also granted the power to make regulations prescribing the manner in which the proper books, invoices and other papers shall be kept, and entries therein made by the persons subject to the merchant's tax. (Act No. 2339, secs. 5, 6 (*j*); Administrative Code, sec. 1424 (*j*).

Taking advantage of his supposed authority, pursuant to the above cited provisions of law, the Collector of Internal Revenue issued a circular letter on October 8, 1914, approved by the Secretary of Finance and Justice, requiring every merchant and manufacturer with certain specified exceptions, who was subject to the merchant's tax, to keep a record of their daily sales either in the English or the Spanish language. The validity of this regulation was challenged in the case of Young *vs.* Rafferty, *supra*. The defense of the Collector of Internal Revenue was that the regulation issued by him had for its object the protection of the Government and to prevent the non-payment of the merchant's and percentage taxes. Following trial in the lower court and appeal, the Supreme Court held that sections 5 and 6 of Act. No. 2339 did not empower the Collector of Internal Revenue to designate the language in which the entries in such books are made by merchants subject to the percentage tax. Omitting portions of the opinion handed down by Mr. Justice Trent, some of which will be noticed in other connections, it is only necessary for us to quote the portion which deals with the subject at hand, namely:

"It is also urged that the regulation is

designed to protect the Government against evasion of the percentage tax. If it be necessary to impose such a burden upon so large a number of the business community in order that the Government may protect itself from such losses, we apprehend that it was never intended that the initiative should be taken by the Collector of Internal Revenue. The condition complained of by the Collector has confronted the Government ever since the present system of internal revenue taxes was inaugurated in 1904. It is not for the administrative head of a Government bureau to say that such an obstacle to the collection of taxes shall be removed by imposing burdens not specifically authorized in the law itself.

"In view of the fact that a particular language is not essential to the recording of the information desired by the Collector and the enforcement of the objectionable provisions of his circular would be a very important step in the solution of the language problem in this country, amounting, we believe, to a question of public policy which should not be dictated by any administrative authority, we must conclude that the Collector has exceeded his authority in this particular. *In reaching this conclusion we have carefully avoided using any language which would indicate our views upon the plaintiffs' second proposition to the effect that if the regulation were an Act of the Legislature itself, it would be in-*

valid as being in conflict with the paramount law of the land and treaties regulating certain relations with foreigners. (*Italics ours.*)

Mr. Justice Carson, in a concurring opinion of some importance as will hereinafter be emphasized, said:

"I concur, on the ground that under the order of the Collector, if strictly enforced, the tens of thousands of merchants, petty storekeepers and others affected by its terms, both native and foreign, who have no adequate knowledge of either English or Spanish, would be required in effect not only to keep a record of the results of their business transactions in English or Spanish but also to conduct such transactions in one or other of those languages.

"I do not question the authority of the Collector to prescribe rules for the keeping of such records or transcripts of records of the *results* of mercantile transactions as may be reasonably necessary in order to eliminate fraud or concealment, and to expedite the labors of those charged with the collection of taxes; but I do not think that he has any authority to require the keeping of the original record of the vast number of these transactions in a tongue unknown to the parties; and I think furthermore that his authority to prescribe regulations intended to expedite the collections of taxes of this na-

ture, is necessarily limited to the promulgation of regulations reasonably necessary to that end."

As will at once be noted, the Supreme Court limited its decision to the annulment of the circular of the Collector of Internal Revenue. It left for the Legislature to determine if a law on the subject should be enacted, without expressing any opinion as to the validity of such law.

Following some agitation on the subject, the then Governor-General, in a message to the Legislature on October 16, 1920, recommended for consideration "Legislation as already approved by the Senate should require that all business houses keep their books in English or Spanish, or in any one of the local Philippine dialects, in order to avoid wholesale frauds upon the public revenues." The bill was presented in the House of Representatives by Representative Urgello with the following explanatory note:

"As all of the merchants doing business in the Philippines are not of the same nationality, some of them keep their books of account in their native language. The examination of these books by the agents of the Government for their proper verification, is made with some difficulty, inasmuch as in many cases it requires the help of a translator which constitutes an expense to the public treasury.

"Uniformity and facility in the examina-

tion and investigation of these books require that the same be kept by the merchant, whether individuals or corporations, in English or Spanish.

"This is the object of the attached bill."

After the Philippine Legislature had passed Act No. 2972, the present Governor-General in a message asked for either the repeal or a modification of the law. Hearings before committees of the Legislature were permitted. According to the report prepared and submitted by the Chairman of the Committee on Revision of Laws of the House of Representatives, which we feel at liberty to take into consideration, at the hearing before this Committee the representatives of the Chinese community advocated the repeal of Act No. 2972, but this was strongly opposed by the representatives of the Bureau of Audits and the Bureau of Internal Revenue. The representative of the Bureau of Internal Revenue, Mr. Posadas, "gave repeated assurances before the Committee that due to the unintelligibility of the books of Chinese merchants, because of the language in which the same was written, the public treasury was being defrauded annually in several millions of pesos, and that in order to protect the Government it is necessary to uphold Act No. 2972." (Exhibit 3.) Eventually, the Philippine Legislature, with the exception that it postponed the taking effect of the law, refused otherwise to modify it.

There has next followed the instant proceedings, by means of which an expression of opinion is

sought to settle the conflict of views as to the constitutionality of Act No. 2972. The law is attacked by the petitioners as in violation of treaty and constitutional rights of Chinese merchants, domiciled in the Philippine Islands. It is contended with marked earnestness, that the law is unreasonable and oppressive in nature, and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States and of the corresponding provisions of the Jones Law, the Act of Congress of August 29, 1916, guaranteeing to all persons the equal protection of the laws. The law is defended by the City Fiscal of Manila as a proper and reasonable exercise of the police power of the Philippine Government, and of its power of taxation.

Four questions suggest themselves for discussion. What would be the probable effect if Act No. 2972 was put in operation? What was the purpose of the Legislature in enacting Act No. 2972? What are the respective legal rights of the Chinese and of the Government? What is a logical construction of Act No. 2972? In connection with the first question, it is of course, undeniable that we cannot declare a legislative Act void because it conflicts with our opinion of what is just or expedient. Nevertheless, the effects and consequences enter with more or less force into consideration, whenever the validity of any law is in issue. (*See* 2 Lewis' Sutherland Statutory Construction, pp. 908, *et seq.*)

The pleadings, the evidence, and the decision in

Young *vs.* Rafferty, *supra*, disclose with regard to the mercantile life of the Philippines, the following facts:

There are approximately 85,000 merchants of all nationalities in the Philippines, to whom Act No. 2972 applies. Of this number 71,000 are Filipinos who may use their own dialects, unless they prefer English or Spanish. Approximately 1,500 are American, British or Spanish subjects, who are permitted to use their native languages. Possibly 500 are of foreign nationalities most of whom know the English or Spanish language. Of the remainder, between 10,000 and 12,000 are Chinese. The aggregate commercial business transacted by the Chinese merchants represents about sixty per cent of the total business done by all the merchants in the Philippine Islands. According to Mr. H. B. Pond, vice-president and general manager of the Pacific Commercial Company, the Chinese "are the principal distributing factors in the Philippine Islands of imported goods, and the principal gatherers of goods for exportation in the more remote places," and if the Chinese were driven out of business, "there would be no other system of distribution available throughout the Islands." It is further claimed, on the one hand, that not to exceed one per cent of the Chinese merchants in the Philippine Islands understand English, Spanish or a local dialect, and on the other hand, that at least two-thirds of the Chinese businessmen can easily comply with the law.

Counsel for the petitioners is sponsor for the

sweeping statement that "the enforcement of Act 2972 would probably cause more damage and less good than any other law which has been enacted in the world." This strong stand is to a certain extent corroborated by resolutions adopted and signed by the principal business houses in the City of Manila and by a number of chambers of commerce (Exihibits C, D, E, F, G, H, I, and J, attached to the petition); by the vigorous protest of the Chinese foreign office (Exhibit K); by the opinions expressed by high officials in the War Department "that the law is fundamentally unwise" (Exihibit L) and "is obstructive of good understanding with our neighbors" (Exhibit M); and by the testimony of a large number of Chinese merchants and of other well qualified persons to the effect that sufficient bookkeepers are not available, that it would not be possible for many Chinese merchants, especially the smaller ones, to comply with the law, and that if the Chinese merchants were compelled to keep their books in any language other than the Chinese language, it would bring serious embarrassment to the great majority and might even drive many of them out of business.

Mr. Dee C. Chuan, the President of the China Banking Corporation and of the Chinese Chamber of Commerce, and Honorable Chow Kwo Hsien, Chinese Consul General for the Philippine Islands, testified that they, in collaboration with Chinese merchants, had conducted an investigation from which they made the following estimate of the distribution of sales among the Chinese:

Of the wholesale merchants, 50 had an average amount of sales of over ₱1,000,000; 150 over ₱500,000; 400 over ₱100,000 and 2,735 over ₱40,000. Of the 8,445 retail merchants, the average amount of sales was ₱5,446.40. Basing their calculations on the above, it was found that the annual net income of the 8,445 Chinese retail merchants would not exceed ₱500 each, and of 2,000 of the ₱3,335 wholesale merchants, not to exceed ₱1,000. (Exhibit G.) The same investigation disclosed that not to exceed 12 Chinese firms are actually keeping their books in a language other than Chinese. The Chinese Consul General further testified that from his inquiries, he had found that the great majority of the Chinese merchants are utterly unable to comply with Act No. 2972.

Mr. William T. Nolting, President of the Bank of the Philippine Islands and formerly Collector of Internal Revenue, testified to the following salient facts: 1. Not over one per cent of the Chinese merchants are qualified to transact their business in English, Spanish or a native dialect; 2. It would be impossible to obtain accountants to assist them in keeping their books in English, Spanish or a local dialect, although this deficiency might be overcome in the future; 3. If the merchant is unable to understand his accounts and cannot impose extreme confidence in his bookkeeper, he is in a precarious position at all times; 4. An attempt to enforce Act No. 2972 would not facilitate the collection of taxes from the Chinese merchants but on the other hand might prove prejudicial both to the

interests of the Government and of the Chinese; 5. When he was in charge of the Bureau of Internal Revenue, he never experienced any difficulty in finding and employing a sufficient number of competent and honest Chinese accountants to make the necessary inspections of the books of the Chinese merchants; 6. The honesty of Chinese merchants in making the declarations of their sales compares favorably with other nationalities in that respect; and 7. To permit the Chinese merchants to keep two sets of books, one in Chinese and the other in English, Spanish or some local dialect, would be a most dangerous practice because entries might be made in one set that would not be made in the other.

The reply of the fiscal is to the effect that the oppressiveness of the law has been considerably exaggerated, that it applies as well to Japanese and other foreign merchants who do not complain, that only a relatively small per cent of the Chinese merchants seek to obstruct the enforcement of the law, that bookkeepers are available if the Chinese wish to employ them, and that the new law will facilitate governmental inspection of merchants' books. Numerous witnesses have been called and numerous documents have been offered to substantiate the stand taken by the Government. We will here notice only an indorsement by Wenceslao Trinidad, former Collector of Internal Revenue, and the testimony of Juan Posadas, the present Collector of Internal Revenue.

Former Collector Trinidad, in a communication

addressed to the Secretary to the Governor-General on September 22, 1921, said:

> "During the year 1920, Internal Revenue tax receipts were issued to 95,363 merchants and manufacturers, 183 printers and publishers, 10,424 common carriers, 10,967 contractors and warehousemen, 58,942 peddlers of merchandise, and 1,001 brokers. All of the above mentioned persons are required to pay percentage taxes on their gross sales or receipts. On account of the nature of this tax, these persons are required to keep books of accounts wherein they can enter the amounts of business done by them.
>
> "This Bureau has no statistics to show the number of Chinese engaged in different businesses subject to percentage taxes but it is safe to say that they represent fully sixty per cent of the numbers stated above. All of these Chinese merchants keep their accounts in Chinese, with the exception of a very few large business houses which keep two sets of books of account, one in Chinese and the other in Spanish. There are also other business men who do not keep their books of account either in English or Spanish. These are Germans, Japanese, Syrians and Hindus. Their number cannot be ascertained due to the lack of statistics, but there are many of them in the Islands, especially the Japanese.

"The Bureau of Internal Revenue had up to this time employed 17 Chinese accountants, two Hindus and one Japanese. All of these accountants have been separated from the service with the exception of four Chinese accountants who are at present still employed in the Bureau. Out of the seventeen Chinese accountants employed, five were discharged for graft, seven resigned or were forced to resign for either unsatisfactory services rendered or for suspicion of graft, and one deceased. In spite of this number of accountants employed, only very little number of Chinese books have been investigated and audited, and in the majority of them under declarations of sales or receipts have been found.

"There are also a number of Chinese who are not subject to percentage taxes, but who have books of account that need to be audited

"It can be seen from the foregoing statements that the law requiring merchants to keep their books in English, Spanish or in any of the local dialects is necessary in order to protect the revenue of the Government."

Collector Juan Posadas, in reply to questions, and corroborated by other witnesses, made among others the following interesting statements:

MR. FELIX. If the books of account, not only of the Chinese merchants but of the other foreign merchants, were kept in their own lan-

guages, and not in English, Spanish or some local dialect, would it be possible to have the books of accounts of these merchants audited by the agents or employees of the Bureau of Internal Revenue?

* * * * *

MR. POSADAS. It would be impossible, unless our office had a personnel sufficiently numerous and competent to make the audits of the books of account in the different languages in which they were kept.

MR. FELIX. Has the Bureau of Internal Revenue that sufficient and competent personnel to audit the books of account of merchants who do not keep their books in Spanish, English or some local dialect?

MR. POSADAS. No, sir, we have only an insignificant number of Chinese accountants to make examinations of the books of the Chinese merchants.

* * * * *

MR. FELIX. If the Bureau of Internal Revenue were not able—as according to you it is not able—to examine properly the books of accounts of merchants who do not keep their books in English, Spanish or some local dialect, and the case arose that those merchants who do not keep their books in the languages permitted by Act No. 2972 should pay the full amount of taxes due to the Internal Revenue, even though they were acting in good faith—could such a case occur?

* * * * *

MR. POSADAS. Yes, sir, because judging from the audits even of those books of account which are intelligible to the office personnel, the office has found many differences, or items not declared for the purpose of taxation.

* * * * *

MR. FELIX. Do you know how many cases of merchants were examined in 1922 by the Chinese accountants of the Income Tax Division of your Bureau?

* * * * *

MR. POSADAS. During that year, the Chinese accountants in the Income Tax Division inspected 477 returns of Chinese.

* * * * *

MR. FELIX. Do you know whether there were any under-declarations in those cases that were inspected that you have referred to?

* * * * *

MR. POSADAS. In the comparison of those returns with the books of account of the interested parties, differences were found which amount to more than ₱600,000.00 which was not declared.

* * * * *

MR. GIBBS. And, therefore, assuming that it would be possible to employ a sufficient number of competent Chinese inspectors of books of account, there would be no advantage in the enforcement of Act No. 2972 except in so far as it might aid the directors of the Bureau and the chiefs of Division in making the in-

spections incident to deciding disputes between the inspectors and the merchants that you have mentioned?

MR. POSADAS. The advantage of the Accounting Law, which compels merchants to keep their books in English, Spanish or some local dialect, lies precisely in the fact that it would facilitate the inspection of these books of account by the employees of the Bureau of Internal Revenue, and enable them to check up the taxes which have been paid by the merchants and ascertain whether or not they agree with the transactions actually had. This work is at present being done so far as concerns the merchants who keep their books in languages comprehensible to the Bureau, and to a certain extent it means that those merchants are penalized. On the other hand, it has been almost impossible to do this with regard to those merchants who keep their books entirely in languages not comprehensible to the office, and the net result therefore is that while we can collect differences in taxes due from part of the merchants, it is almost impossible to do so with regard to the other part.

* * * * *

MR. GIBBS. But supposing that you had also Chinese accountants competent to act as supervising agents in the provinces, then what advantage would there be in enforcing Act No. 2972?

MR. POSADAS. The advantage would consist precisely in the fact that we would avoid the duplication of personnel, because otherwise we would have to duplicate the personnel in each district by employing Filipinos and Chinese.

MR. GIBBS. Could you not easily put in a Chinese district inspector and a Filipino district inspector, leaving it to the Chinese district inspector to inspect the books of the Chinese and to the Filipino district inspector the books of the Filipinos and others?

MR. POSADAS. It is physically impossible to employ Chinese supervisors, in view of the fact that up to this time I have never known of a Chinese who has qualified himself in the Civil Service to occupy the position.

* * * * *

MR. GIBBS. Is it not true, Mr. Posadas, that the practice of inspecting the books of account of the Chinese by means of Chinese accountants has been followed by the Bureau of Internal Revenue in the Philippine Islands for the past 20 years or more?

MR. POSADAS. To judge from the results of the inspections made by my bureau during my incumbency, therein, I am led to believe that the inspections which were formerly made were superficial, in view of the fact that the bureau during these later years has discovered large differences which were never declared for the purpose of taxation.

* * * * *

MR. GIBBS. Let's put the question in another form, Mr. Posadas: is it not a fact that the only possible benefit which the Bureau of Internal Revenue would derive from the enforcement of Act No. 2972 would be in sa far as it might assist the bureau in checking up the information required by its regulations?

MR. POSADAS. Yes, sir, and to determine whether any items subject to taxation had been omitted.

MR. GIBBS. Another question, Mr. Posadas: don't you think that by means of the Chinese accountants, much more satisfactory information could be obtained from books properly kept in Chinese than from books kept abominably in English or Spanish?

MR. POSADAS. Even though the books which are kept in language other than Chinese were abominably kept, as long as they contain the entries of all the transactions carried out by a merchant or by a person subject to taxation, it would always be better than a book which is incomprehensible to the administrators of the bureau.

Some slight consideration of the language question in general and of the language question in the Philippines in particular, will assist us in determining if the effect of enforcing Act No. 2972 will cause as much hardship as will be so oppressive on one particular nationality as to nullify the law, or whether the judiciary can constitutionally enforce the law.

Language is the medium by which thoughts are conveyed from one person to another. The law before us recognizes as permissible mediums for business and taxation purposes, English—the language of the people of the British Empire and the Republic of the United States; Spanish—the language of the people of Spain; and local dialects—the language of the home in the Philippines. Of these native dialects, as disclosed in a statement prepared by Dr. T. H. Pardo de Tavera, Director of the Philippine Library and Museum, there are a grand total of eighty-seven, six with extensive literature, and the others with little or no literature. (Exhibit F.) The law fails to take cognizance of the Chinese language, one of the oldest and one of the most extensively used languages in the world.

The Philippine Organic Act, the Act of Congress of August 29, 1916, recognizes for electoral purposes, "Spanish, English or a native language." (Sec. 15.) It enumerates as a qualification for an elective member of the Senate and the House of the Philippine Legislature, ability "to read and write either the English or Spanish language." (Secs. 13, 14.) The municipal law requires as a qualification for an elective municipal officer, ability to read and write intelligently either Spanish, English or the local dialect. (Administrative Code, sec. 2174.) The official language of the courts and their records is at present either English or Spanish, although in practice, Spanish is used more extensively in the lower courts, and English in the appellate court. (Code of Civil Procedure,

sec. 12 as amended by Act No. 2830.) The official language of the legislative branch of the Government is either English or Spanish, although in practice Spanish is more extensively used, while exactly the reverse is true of the executive branch of the Government. In compliance with the President's instructions to the Commission of April 7, 1900, full opportunity has been given to all the people of the Islands to acquire the use of the English language, with the result that English is made the basis of public and private school instruction. (Administrative Code, sec. 922.) In the customs service, the law provides that the cargo manifest and each copy thereof shall be accompanied by a translation into English, if originally written in a language other than English. (Administrative Code, sec. 1226.)

The above brief description of the language situation at least discloses some of the difficulties which have beset the attempt to hasten the adoption of a common language in the Philippines. Yet it is evident, that the Filipino people have cheerfully imposed upon themselves the burden of acquiring one or more languages other than their native language and have now, through their elective representatives, sought to acquire conformity with governmental policy by a large class of foreign residents.

In the United States during the months immediately following the conclusion of the World War, a number of States passed statutes in substantially the same form forbidding the teaching of any mo-

dern language except English, to children below the eighth grade in any school. The United States Supreme Court held the statutes unconstitutional on account of having no reasonable relation to some purpose within the competency of the State to effect, and on account of violating the constitutional guarantee of liberty in the Federal Constitution. "The protection of the Constitution extends to all," it was said, "—to those who speak other languages as well as to those born with English on the tongue." (Meyer *vs.* Nebraska, Bartels *vs.* Iowa, Pohl *vs.* Chico, Nebraska Evangelical Lutheran Synod vs. McKelvie, 1923, 263 U. S., 390, 404; XII Michigan Law Review, Jan., 1924, p. 248.)

In other countries, however, notably in the republics in the Americas, which have had their institutional law greatly influenced by the United States Constitution, laws are on the statute books which permit only Spanish to be used in commercial transactions. This is the system found in Bolivia, Chile, Colombia, Equador, Guatemala, Honduras, Mexico, Salvador, Uruguay, and Venezuela. (Commercial Laws of the World, Vols. 1, 2, 3, 5, 6, 10 and 20; Manzano, Bonilla y Mañana, *Codigos de Comercio, Tomos II y III;* Whelas, Compendium of the Laws of Mexico, vol. I; Exhibit 12.)

The purpose of the Legislature in enacting Act No. 2972 is disclosed by the decision of this court in Young *vs.* Rafferty, *supra*, by the Messages of the Governor-General, by the hearings before the committees of the Philippine Legislature, and by other sources. All these indicate that the Act is

a fiscal measure intended to facilitate the work of the Government agents and to prevent fraud in the returns of merchants, in conformity with the sales tax and the income tax. For instance, in the decision in Young *vs.* Rafferty, *supra*, it was stated: "It need hardly be said that the record which merchants are required to keep of their daily sales under the provisions of the circular letter of the Collector set out in the complaint is simplicity itself, and that it will, if honestly and faithfully kept, enable the Government to collect the percentage tax exactly due it."

Conceded that the Chinese handle sixty per cent of the aggregate business of the Philippines, approximate equality in taxation demands that they pay something like the same proportion in taxes for the support of the State.

In enacting Act No. 2972, the Philippine Legislature did so pursuant to the wide authority which is delegated to it by Organic law. The Organic Act, the Act of Congress, of August 29, 1916, provides "That general legislative power, except as otherwise herein provided, is hereby granted the Philippine Legislature, authorized by this Act." (Secs. 8, 12.)

The police power exists in the Philippine Islands in about the same form and to the same extent as in a State of the American Union. Under the general police power, persons and property in the Philippines have been subjected to various kinds of restrictions and burdens, in order to secure the general health, comfort and prosperity of all. As

indicated by a quotation of petitioners, the police power is not limited to regulations necessary for the preservation of good order or the public health and safety, but the prevention of fraud, cheating and imposition is equally within its scope.

The rule to follow in the appliction of the police power is that announced in the leading case of Lawton vs. Steele 1884, 152 U. S., 133) oft quoted with approval by our Supreme Court, namely:

> "Large discretion is necessarily vested in the Legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests. To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations." (See further, U. S. vs. Toribio, 1910, 15 Phil., 85; Case vs. Board of Health, 1913, 24 Phil., 250; U. S. v. Gomez, 1915, 31 Phil. 218; Churchill vs. Rafferty, 1915, 32 Phil., 580; and Rubi vs. Provincial Board of Mindoro, 1919, 39 Phil., 660.)

The power of taxation is, likewise, in the Philippines as in the United States, the strongest of all the powers of Government, practically absolute and unlimited. The familiar maxim early announced by Mr. Chief Justice Marshall for the United States Supreme Court and since frequently invoked by the courts is that "the power to tax involves the power to destroy." (McCulloch vs. Maryland, 1819, 4 What., 316.) It is a legislative power. All its incidents are within the control of the Legislature. It is the Legislature which must determine questions of state necessarily involved in ordering a tax, which must make all the necessary rules and regulations which are to be observed in order to produce the desired results, and which must decide upon the agencies by means of which collections shall be made. (1 Cooley on Taxation, pp. 7, 43, 46, 54; Cowles vs. Britain, 1822, 2 Hawks, 204; Genet vs. City of Brooklyn, 1885, 99 N. Y., 296; Felsenheld vs. U. S., 1902, 186 U. S., 126; Muños vs. Hord, 1909, 12 Phil., 624.)

It is equally manifest that the power to tax is not judicial power and that a strong case is required for the judiciary to declare a law relating to taxation invalid. If, of course, so great an abuse is manifest as to destroy natural and fundamental rights, it is the duty of the judiciary to hold such an act unconstitutional. Nevertheless, certain of the limitations are such that they must address themselves exclusively to the legislative department, and be subject only to review by the people who elect the members of this department.

To use the language of Judge Cooley:

> "In order to bring taxation imposed by a state, or under its authority, within the scope of the provisions of the fourteenth amendment which prohibits the deprivation of property without due process of law, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necesasry operation is really spoliation under the power to tax. * * * The inhibition of the amendment was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislations. * * * In the construction of the revenue laws, special consideration is of course to be had of the purpose for which they are enacted. That purpose is to supply the government with a revenue. But in the proceedings to obtain this it is also intended that no unnecessary injury shall be inflicted upon the individual taxed. While this is secondary to the main object—the impelling occasion of the law—it is none the less a sacred duty. Care is taken in constitutions to insert provisions to secure the citizen against injustice in taxation, and all legislative action is entitled to the presumption that this has been intended." (1 Cooley on Taxation, pp. 55, 56, 73, 74, 75, 452.)

The petitioners are Chinese subjects. The treaty

rights accorded the Chinese are those of the most favored nation. Their constitutional rights are those accorded aliens, which means that the life, liberty or property of Chinese persons cannot be taken without due process of law, and that they are entitled to the equal protection of the laws, without regard to their race. (Yick *vs.* Hopkins, 1885, 118 U. S., 356; Kwong Sing *vs.* City of Manila, *supra.*) Our Code of Commerce and our Corporation Law permit foreigners, and companies created in a foreign country, to engage in commerce in the Philippine Islands. (Code of Commerce, art. 15; Act No. 1459, sec. 73.) The rights of these Chinese aliens are not less than the rights of Americans and Philippine citizens. Nor more.

Six decisions bearing particularly on the rights of the Chinese, three coming from the United States Supreme Court, two from the Supreme Court of the Philippine Islands, and one from the Supreme Court of Hawaii have at least persuasive application to the instant proceedings. Two of the decisions of the United States Supreme Court that we have in mind, Barbier *vs.* Connolly (1884, 113 U. S., 127) and Yick *vs.* Hopkins (1885, 118 U. S., 356), are so well known as merely to require citation, while a recent series of cases on the language question have already been mentioned. We only stop to quote one significant sentence taken from Mr. Justice Field's opinion, pertaining to the Fourteenth Amendment to the United States Constitution, in the first cited case, namely: "Class legislation, discriminating against some and favoring

others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of operations it affects alike all persons similarly situated, is not within the Amendment."

The case of Young *vs.* Rafferty, *supra*, of Philippine origin we have heretore noticed. But later in point of time, a question was raised in the Philippine Courts relative to the power of the Municipal Board of the City of Manila to enact ordinance No. 532, requiring receipts in duplicate in English and Spanish duly signed, showing the kind and number of articles delivered by laundries and dyeing and cleaning establishments. (Kwong Sing *vs.* City of Manila, *supra*.) It was held that as said ordinance was neither oppressive, nor unequal, nor unjust, it was valid. It was said:

> "The purpose of the municipal authorities in adopting the ordinance is fairly evident. Ordinance No. 532 was enacted, it is said, to avoid disputes between laundrymen and their patrons and to protect customers of laundries who are not able to decipher Chinese characters from being defrauded. The object of the ordinance was, accordingly, the promotion of peace and good order and the prevention of fraud, deceit, cheating and imposition. The convenience of the public would also presumably be served in a community where there is a Babel of tongues by having receipts made out in the two official languages. Reasonable restraints of a lawful business for such pur-

poses are permissible under the police power. The legislative body is the best judge of whether or not the means adopted are adequate to accomplish the ends in view.

* * * * *

"Our view after most thoughtful consideration, is, that the ordinance invades no fundamental right and impairs no personal privilege. Under the guise of police regulation, an attempt is not made to violate person or property rights. The ordinance is neither discriminatory nor unreasonable in its operation. It applies to all public laundries without distinction, whether they belong to Americans, Filipinos, Chinese or any other nationality. All without exception, and each and everyone of them without distinction, must comply with the ordinance. There is no privilege, no discrimination, no distinction. Equally and uniformly the ordinance applies to all engaged in the laundry business, and as nearly as may be, the same burdens are cast upon them.

* * * * *

"There is no analogy between the instant case and the former one of Young vs. Rafferty (1916, 33 Phil., 556.) The holding there was that the Internal Revenue Law did not empower the Collector of Internal Revenue to designate the language in which the entries in books shall be made by merchants subject

> to the percentage tax. * * * There, the action was taken by means of adminsitrative regulation; here, by legislative enactment. There, authority was rested on specific delegated powers; here, on both specific power and the all-pervading police power. There, governmental convenience was the aim; here, the public welfare. We are convinced that the same justices who participated in the decision in Young vs. Rafferty (supra) would now agree with the conclusion towards which we are tending."

The case most directly in line with the facts before us, is that of the King vs. Lau Kiu (1888, 7 Hawaii, 489), decided by the Supreme Court of the Hawaiian Islands during the period of the monorchial régime in those Islands. An Act of the Hawaiian Legislature prescribed, that no wholesale or retail license should be granted to any person except upon the express condition that the licensee shall at all times keep full, true and correct books of account of all business transacted by him in connection with such license, in the English, Hawaiian or some European language. It was contended among other things that this was legislation against one certain class of subjects in the Kingdom, *to with*, against such subjects (and particularly the Chinese) as do not speak or write the Hawaiian, English or any European language, and was not applicable to all citizens alike. It was held by the Supreme Court that this Act was contrary to articles 1 and 14 of the Constitution, which secure to all per-

sons the enjoyment of life and liberty and the right of acquiring, possessing and protecting property according to law. It was held, further, that the Act could not be sustained as an exercise of the police power of the State, as it had no relation to the health, comfort, safety or welfare of the public.

The presumption is always in favor of constitutionality. As the United States Supreme Court in a case of Philippine origin, said: "The function of the Legislature is primary, its exercise fortified by presumption of right and legality, and is not to be interfered with lightly, nor by any judicial conception of their wisdom or propriety." (Weems vs. U. S., 1910, 217, U. S., 376.) This presumption is especially strong in the case of statutes enacted to promote a public purpose, such as statutes relating to taxation. To doubt is to sustain.

Only the other day, the United States Supreme Court speaking through Mr. Justice Sutherland, said:

> "The judicial duty of passing upon the constitutionality of an Act of Congress is one of great gravity and delicacy. The statute here in question has successfully borne the scrutiny of the legislative branch of the government, which, by enacting it, has affirmed its validity; and that determination must be given great weight. This court, by an unbroken line of decisions from Chief Justice Marshall to the present day, has steadily adhered to the rule that every possible presumption is in favor of the validity of an Act

of Congress until overcome beyond rational doubt. But if, by clear and indubitable demonstration, a statute be opposed to the Constitution, we have no choice but to say so." (Adkins vs. Children's Hospital, 1923, U. S. Sup. Ct. Adv. Op., 440.)

That the Supreme Court of the Philippine Islands has consistently followed these rules is disclosed by the few laws held invalid. During the twenty-three years of the Supreme Court's existence, it has never held invalid one complete law, while portions of laws have been nullified on but few occasions. (Casanovas vs. Hord, 1907, 8 Phil., 125; Omo vs. Insular Government, 1908, 11 Phil., 67; Weigall vs. Shuster, 1908, 11 Phil., 340; Barsameda vs. Moir, 1913, 25 Phil., 44; McGirr vs. Hamilton, 1915, 30 Phil., 563; Central Capiz vs. Ramires, 1920, 40 Phil., 883; Concepcion vs. Paredes, 1921, 42 Phil., 699; McDaniel vs. Apacible, 1922, 44 Phil., 218.)

It may be said to be an elementary, a fundamental, and a universal rule of construction, applied when considering constitutional questions, that when a law is susceptible of two constructions one of which will maintain and the others destroy it, the courts will always adopt the former. Whenever a law can be so construed as to uphold it, it will be so construed although the construction which is adopted does not appear to be as natural as another construction. But where the meaning of the Act is plain, words cannot be read into it or out of it in order to save the law. (1 Lewis Sutherland Statu-

tory Construction, pp. 135, 136; Cooley's Constitutional Limitations, 184; 6 R. C. L., 78.)

In the early case of United States *vs.* Coombs, 1838, 37 Peters, 72, Mr. Justice Story, speaking for the United States Supreme Court, said:

> "Before we proceed to the direct consideration of the true import and interpretation of this section, it seems highly important, if not indispensable, to say a few words as to the constitutional authority of Congress to pass the same. For if, upon a just interpretation of the terms thereof, Congress have exceeded their constitutional authority, it will become our duty to say so, and to certify our opinion on the points submitted to us, in favor of the defendant. On the other hand, if the section admits of two interpretations, each of which is within the constitutional authority of Congress, that ought to be adopted, which best conforms to the terms and the objects manifested in the enactment, and the mischiefs which it was intended to remedy. And again, if the section admits of two interpretations, one of which brings it within, and the other presses it beyond, the constitutional authority of Congress, it will become our duty to adopt the former construction; because a presumption never ought to be indulged, that Congress meant to exercise or usurp any constitutional authority, unless that conclusion is forced upon the court by language altogether unambiguous."

In the later case of Granada County Supervisors *vs.* Brogdon, 1884, 112 U. S., 261, Mr. Justice Harlan, speaking for the United States Supreme Court, said:

> "It certainly cannot be said that a different construction is required by the obvious import of the words of the statute. But if there were room for two constructions, both equally obvious and reasonable, the court must, in deference to the Legislature of the State, assume that it did not overlook the provisions of the Constitution, and designed the Act of 1871 to take effect. Our duty, therefore, is to adopt that construction which, without doing violence to the fair meaning of the words used, brings the statute into harmony with the provisions of the Constitution. Cooley Constitutional Law, 184-5; Newland v. Marsh, 19 Ill., 376, 384; People v. Supervisors, & o., 17 N. Y., 235, 241; Colwoll v. May, 4 C. E. Green (19 N. J. Eq.), 245, 249. And such is the rule recognized by the Supreme Court of Mississippi in Marshall v. Grimes, 41 Miss., 27, 31, in which it was said: 'General words in the Act should not be so construed as to give an effect to it beyond the legislative power, and thereby render the Act unconstitutional. But, if possible, a construction should be given to it that it will render it free from constitutional objection, and the presumption must be that the Legislature intended to grant such rights as were

> legitimately within its power.' Again, in Sykes v. Mayor, & c., 55 Mississippi, 115, 143: 'It ought never to be assumed that the law-making department of the government intended to usurp or assume power prohibited to it. And such construction (if the words will admit of it) ought to be put on its legislation as will make it consistent with the supreme law.'"

Identical canons of statutory construction have aften been invoked in the Philippines to enable the courts to avoid declaring a law unconstitutional. For instance, the decision in the well known case of *In re* Guariña, 1913, 24 Phil., 37, 46, citing Black on Interpretation of Laws, pp. 87, 93 and 94, is authority for this statement of the rule: "It is the duty of the courts in construing a statute enacted by the Philippine Commission (Legislature), not to give it a construction which would be repugnant to an Act of Congress, if the language of the statute is fairly susceptible of another construction not in conflict with the higher law; and in doing so, contentions touching the apparent intention of the legislator, will be disregarded which would lead to the conclusion that the Legislature intended to enact a law in violation of an Act of Congress." Not long since, this court, in the case of Andres Fuentes vs. The Director of Prisons, No. 22449, saved Act No. 3104 relating to the death penalty, from a fate similar to its subject by refusing to give a literal meaning to the phraseology of the law.

We have been enveigled into a much more elabor-

ate discussion of this case than is at all essential, for two reasons: firstly, because of the earnestness of counsel who have impressed on the court with marked ability the merits of their respective cases and the dangers which lurk in a contrary holding; and secondly, because of the effectiveness of the background as indicative of executive purpose and legislative intent. Speaking frankly, however, a majority of the court has all the time had a well defined opinion which we will now state. We come to the last question suggested, a construction of Act No 2972 which allows the court legally to approve it.

A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional.

A second interpretation is that the Chinese merchant, while permitted to keep his books of account in Chinese, must also keep another set of books in either English, Spanish or a native dialect. The respondents claim the law is susceptible of such construction. It occurs to us, however, that this construction might prove as unsatisfactory as the first. Fraud is possible in any language. As approximation to governmental convenience and an approximation to equality in taxation is the most which may be expected.

A third construction which is permissible in view

of the history of the legislation and the wording of the statute, is, that the law only intended to require the keeping of such books as were necessary in order to facilitate governmental inspection for tax purposes. It has not escaped our notice that the law does not specify what books shall be kept. It is stated by competent witnesses that a cash book, a journal, and a ledger are indispensable books of account for an efficient system of accounting, and that, in the smaller shops, even simpler entries showing merely the daily record of sales and record of purchases of merchandise would be sufficient. The keeping of records of sales, and possibly further records of purchases, in English, Spanish or a native dialect, and the filling out of the necessary forms would serve the purpose of the Government while not being oppressive. Actually, notations in English, Spanish or a dialect of all sales in sales books, and of data in other specified forms are insisted upon by the Bureau of Internal Revenue, although as appears from Exhibit 2, it is doubtful if all Chinese merchants have complied with these regulations. The faithful observance of such rules by the Chinese is not far removed from the offer of cooperation oft made for them by the petitioners or the "translation of the account books" oft mentioned and explained by the respondents.

The law, in speaking of any person, company, partnership or corporation, makes use of the expression "its account books." Does the phrase "its account books" mean that all the account books of the person, company, partnership or corporation

must be kept exclusively in English, Spanish or any local dialect? The petitioners argue that the law has this meaning. Or does the phrase "its account books" mean that the persons, company, partnership or corporation shall keep duplicate sets of account books, one set in Chinese and the other a translation into English, Spanish or any local dialect? Counsel for the respondents urge this construction of the law upon the court. Or does the phrase "its account books" mean that the person, company, partnership or corporation must keep such account books as are necessary for taxation purposes? This latter interpretation occurs to us as a reasonable one and as best safeguarding the rights of the accused. And lastly, what effect has Act No. 2972 had upon the provisions of the Code of Commerce on the subject of merchants? Has the Act repealed or modified any article of the Code of Commerce?

The interrogatories above made at least lead to the deduction that the law is more or less ambiguous and that it will bear two or more constructions.

Let us repeat: Act No. 2972 is a fiscal measure. It should be so construed if possible as to effectuate legislative intent, as collected from the occasion for the law, the circumstances, under which it was enacted, the mischief to be remedied, and the policy which dictated its passage. It should be so construed if possible as to avoid conflict with the constitution, although such construction may not be the most obvious or natural one. Giving, therefore, to the law a meaning which will carry out the main governmental purpose and which will permit

us to sanction its constitutionality, it seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in the books of account or forms subject to inspection for taxation purposes in any other language than either the English, or Spanish language or a local dialect, although permitting all merchants to execute their commercial transactions or operations in any language or dialect they may prefer, and although permitting them to keep such other books of account as their personal convenience may dictate and in a language which will come most easily to them. We would go so far as to hold that circular No. 467 of the Bureau of Internal Revenue which this court once held beyond the power of the Collector of Internal Revenue to promulgate, and any other reasonable regulation of a similar nature, as within the power of the Philippine Legislature to sanction and entirely enforceable.

To any possible plaint by the Government, that this is tantamount to "judicial legislation," we would say: It is not "judicial legislation" as this phrase is commonly used in the spirit of antagonistic fault finding. No words are written into the law. No words are taken out of the law. It is merely a practical judicial construction of a law where the validity of this law is in issue, which gives to the law a meaning accomplishing everything needed by the Government for tax purposes, without being unduly oppressive on the individual, and which permits the courts to uphold the law.

To the petitioners, who by our decision do not

obtain all they may wish, we append this word of advice: Under such a construction as is above indicated, the Chinese will not be singled out as a special subject for discriminating and hostile legislation. There will be no arbitrary deprivation of liberty or arbitrary spoliation of property. There will be no unjust and illegal discrimination between persons in similar circumstances. The law will prove oppressive to the extent that all tax laws are oppressive, but not oppressive to the extent of confiscation. The means to accomplish a necessary interference with private business are no more oppressive upon individuals than is necessary to maintain the State. The law is not intended for the creditors, but has relation to the public welfare, to the power of taxation, to the right of the Government to exist. The Chinese must bear their just proportion of the tax burden, however unwelcome it may be, without flinching.

A faint effort has been made by the petitioners to have the court declare Act No. 2972 void because the subject thereof is not expressed in its title. But legislation should not be embarrassed by such strict construction as is urged by counsel. No distinguishable variance between the title of the law and the body of the law can be discovered after microscopic examination. The law is brief in its terms, and neither the Legislature nor the public need be misled by the title. (Government of the P. I. v. Binalenan, 1915, 32 Phil., 634.)

We construe Act No. 2972 as meaning that any person, company, partnership or corporation en-

gaged in commerce, industry or any other activi
for the purpose of profit in the Philippine Islan
shall keep its account books consisting of sales boo
and other records and returns required for taxati
purposes by regulations of the Bureau of Intern
Revenue, in effect when this action was begun,
English, Spanish or a local dialect. Agreeable
such construction, we hold Act No. 2972 valid a
constitutional.

The temporary injunction heretofore issued is d
solved, although under the construction given to t
law it may well be doubted if the Government w
care to proceed with the criminal prosecution.
the Government should not dismiss the informati
this question may be raised by demurrer in t
lower court.

Petition denied without costs.

(Signed) GEO. A. MALCOLM.

WE CONCUR:

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(Signed) RAMON AVANCENA
(Signed) IGNACIO VILLAMOR
(Signed) JAMES A. OSTRAND

. . . . . .

Johnson, Acting Chief Justice did not take pa
Street, J. dissents.
Johns, J. dissents.

YU CONG ENG ET AL. *vs.* TRINIDAD ET AL
G. R. No. 20479

STREET, *J., dissenting:*

The Act which has been assailed in this case looks innocent enough on its face but when examined in connection with conditions among those for whom it was prescribed, compliance is found to be impossible, or supposing that the Act could be complied with, the loss resulting to thousands of Chinese merchants would be so disproportionate to any possible good to be attained, that the enforcement of the law would amount to a denial of liberty and equal protection of the law to the persons adversely affected.

It is unnecessary for me to enlarge upon the destructive effects of the law as a ground for declaring it invalid, for it is admitted in the majority opinion that if Act No. 2972 is taken to mean what it says, it must be considered a dead letter. But after admitting this much, the court, in its extreme reluctance to declare the entire statute void, addresses itself to the problem of limiting its effect by what I consider to be an illegitimate process of judicial amendment under the guise of interpretation. The first section of the Act, as thus amended by the Supreme Court, reads as follows:

> "It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to

keep its account books, (consisting of sales books and other records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue, in effect when this action was begun) in any language other than English, Spanish or any local dialect."

The new matter which I have here inserted in parenthesis is taken verbatim from the dispositive part of the decision and defines precisely the extent to which the court has decided to allow the Act to operate. Where are the rules of interpretation by which this matter can be deduced from the language of the Act? The opinion of the court supplies no answer. Of course if the Legislature had confined the Act to giving the Collector of Internal Revenue a power to prescribe forms and require data convenient for the assessment of taxes, the law would not have been subject to criticism; but how can an intention to legislate in this form be deduced from the proposition, so entirely distinct, contained in the Act, that it shall be unlawful for a merchant to keep his account books in other languages than those mentioned? That the court is here exercising the mere role of a legislator is very obvious, for who can say that the Philippine Legislature, conscious of the ineffectiveness of the law as written, would have willed that the power granted to the Collector should take the precise form and extent now allowed by the court? In assuming the functions of a legislature we are entering upon a sea that has not been charted for the guidance of courts, and if this decision should prove fruitful as a pre-

cedent we shall find ourselves free in the future to wander pretty much at will through legislative Acts.

The precise rule applicable to this case is stated in Meyer *vs.* Nebraska, 262 U. S., 390; 67 L. ed., 1042, where the Supreme Court of the United States, speaking through Mr. Justice McReynolds, declared that the liberty secured by the constitutional provision under discussion may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.

The decision of the Supreme Court of Hawaii in King *vs.* Lao Kiu, 7 Hawaiian Rep., 489, declaring invalid a statute almost exactly like that involved in this action is also suggestive, as reflecting judicial sense in a community containing a large element of Chinese population.

It is my opinion that Act No. 2972 of the Philippine Legislature is wholly void, and the injunction should have been made perpetual. In addition to smashing the law the court should have removed the debris.

(Sgd.) THOS. A. STREET,
Jan. 28, 1925.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
IN THE SUPREME COURT OF THE
PHILIPPINE ISLANDS

IN BANC

YU CONG ENG, et al.,
Petitioners,
vs.
W. TRINIDAD, Collector of Internal Revenue, et al.,
Respondents.

G. R. No. 20479
Submitted:
Promulgated:
Justices present: Street, Malcolm, Avanceña, Villamor, Ostrand, Johns and Romualdez, JJ.

JONHS, *J., dissenting:*

With all due respect to the well written, exhaustive majority opinion, the only question involved is the meaning and construction which should be placed upon Act No. 2972, which is entitled "An Act to provide in what language account books shall be kept, and to establish penalties for its violation."

> "Section 1: It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keeep its account books in

any language other than English, Spanish or any local dialect.

"Section 2: Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both."

It will be noted that Section 1 makes it unlawful for any of the persons specified "to keep its account books in any language other than English, Spanish or any local dialect." Section 2 provides that any person violating the provisions of Section 1 shall be punished by a fine of not more than ₱10,000.00 or by imprisonment for not more than two years or both. In other words, you have a law prohibiting the doing of certain things and providing a punishment for its violation. Hence, the statute in question is a criminal law, and must be construed as such.

Sutherland on Statutory Construction is recognized as standard authority all over the world, and portions of it are quoted with approval in the majority opinion.

In his Second Edition, Section 531, the author says:

> "*What statutes are penal.*—Among penal laws which must be strictly construed, those most obviously included are all such acts as in terms impose a fine or corporal punishment under sentence in state prosecutions, or forfeitures to the state as a punitory consequence of violating laws made for preservation of the peace and good order of society."

The majority opinion frankly says:

> "A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional."

In Section 363, Sutherland on Statutory Construction, it is said:

> "If a statute is plain, certain and unambiguous, so that no doubt arises from its own terms as to its scope and meaning, a bare reading suffices; then interpretation is needless.
>
> "Section 366. * * * We are not at liberty to imagine an intent and bind the letter of the act to that intent; much less can we indulge in the license of striking out and inserting, and remodeling, with the view of making the letter express an intent which the statute in its native form does not evidence. Every construction, therefore, is vicious which requires great changes in the letter of the statute, and, of the several constructions, that is to be preferred which introduces the most general and uniform remedy.
>
> "* * * No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for,

justify any judicial addition to the language of the statute.

"The Legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the Act read by itself, or in connection with other statutes pertaining to the same subject, is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms.... If a legislative enactment violates no constitutional provision or principle, it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage. Courts have, then, no power to set it aside, or evade its operation by forced and unreasonable construction. If it has been passed improvidently, the responsibility is with the Legislature and not with the courts.

"Section 520. *Strict construction of penal statutes.*—The penal law is intended to regulate the conduct of people of all grades of intelligence within the scope of responsibility. It is therefore essential to its justice and humanity that it be expressed in language which they can easily comprehend; that it be held obligatory only in the sense in which all can and will understand it. And this consideration presses with increasing weight according to the severity of the penal-

ty. Hence every provision affecting any element of a criminal offense involving life or liberty is subject to the strictest interpretation; and every provision intended for the benefit of the accused, for the same humane reason, receives the most favorable construction. The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the Legislature, not in the judicial department. It is the Legislature, not the court, which is to define a crime and ordain its punishment... The case must be a very strong one indeed which would justify a court in departing from the plain meaning of the words, especially in a penal Act, in search of an intention which the words themselves did not suggest...

"... 'The established rule is,' says the court in *Ex parte* Bailey, 'that a penal law must be construed strictly, and according to its letter. Nothing is to be regarded as included within them that is not within their letter as well as their spirit; nothing that is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended by the legislature...'

"Section 521. A penal statute cannot be extended by implication or construction. It cannot be made to embrace cases not within

the letter, though within the reason and policy, of the law."

Applying such rules of construction to Act No. 2972, how, where or in what manner is the language of Act No. 2972 ambiguous, indefinite or uncertain? Every word of it is intelligent English. Where is there any doubt or uncertainty as to the meaning of any word in the Act? As the majority opinion states, if the language used in the Act means what it says, it must be construed as unconstitutional. For such reason, the majority opinion holds that the Act should not be construed to mean what it says, but that it should be construed to mean what it is claimed the Legislature intended it should mean. If the language in the Act was indefinite, uncertain or ambiguous that position would be tenable.

Numerous decisions are cited in the majority opinion, all of which are good law, but only two of them are in point upon the main question here involved, and both of them are squarely against the law as laid down in the majority opinion. In legal effect, that opinion holds that Act No. 2972, in its existing form, and as it was enacted by the Legislature, is unconstitutional and void. It then proceeds to reconstruct, change and modify the law, and then holds that the law, as reconstrued and modified, is constitutional. No law is cited which authorizes this or any other court to reconstruct or modify the plain, simple language of a legislative Act, for the simple reason that no such a law will ever be found. But, as Sutherland says, where, as

in the instant case, the language is clear and explicit, it must be construed to mean what it says.

On legal principle, the case of Meyer *vs.* Nebraska, decided by the Supreme Court of the United States at the October term, 1922, 67 L. ed., 390, cited in the majority opinion, is square in point. The Legislature of Nebraska passed a law entitled "An Act Relating to the Teaching of Foreign Languages in the State of Nebraska," Section 1 of which is as follows:

> "No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.
>
> "Section 2. Languages, other than the English language, may be taught as languages only after a pupil shall have atatined and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.
>
> "Section 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five ($25) dollars, nor more than one hundred ($100) dollars or be confined in the county jail for any period not exceeding thirty days for each offense."

That court held the act unconstitutional and void

under the Fourteenth Amendment. Notice the similarity of the legal questions involved. Also notice that Section 2 of that act provides that English language may be taught after the pupils have passed the eighth grade. In the instant law, there is no exception whatever. That law was held void by the highest court of the land whose decisions this court should follow and respect. By comparison of the two laws, it will be noted that there is much stronger reason for holding the law unconstitutional in the instant case than in the case of Meyer *vs.* Nebraska. It will also be noted that the Supreme Court of the United States squarely met and decided the constitutionality of the law.

The Legislature of the Hawaiian Kingdom enacted a law, Section 1 of which is as follows:

> "That from and after the first day of October next, no wholesale or retail license shall be granted to any person except upon the express condition that such licensee shall at all times keep full, true and correct books of account of all business transacted by him in connection with such licensed business, which books of account shall be kept in the English, Hawaiian or some European language."

And the Supreme Court of Hawaii, in 7 Hawaiian Reports, 489, held that the law was unconstitutional and void.

Compare the language used in the Nebraska Act and the Hawaiian Act with that of Act No. 2972. In each case, it is plain, clear and simple, and there is

no doubt as to what the legislature intended. In the Nebraska case, there was no attempt made by the Supreme Court of the United States to reconstruct, change or modify the law as it was enacted by the legislature. The same thing is true in the Hawaiian case.

You will look in vain to find a decision of the Supreme Court of the United States where that court has ever reconstructed or modified the plain, clear, simple language of a legislative act, for the purpose of holding it constitutional. We frankly concede that, for taxation purposes, the legislature has the power to enact a law requiring that a record of all sales and purchases should be kept in a given language, and to specify and define how and in what manner such records should be kept, and that such a law would be valid. But we are not dealing with the question of what the legislature can do. The question involved here is what the legislature has done. Both in the title and the body of the act, the legislature has said that it shall be unlawful for any person, firm or corporation engaged in certain lines of business to keep its account books in any language other than English, Spanish or any local dialect, and has expressly imposed a penalty for a violation of the act. There are no exceptions or limitations in the language, and it is not confined or limited to any specific purpose. It is broad and general and applies to any and all account books which may be kept or used in connection with the business.

The majority opinion holds that the law should be construed to read that account books, for taxation

purposes only, shall be kept in either English, Spanish or any local dialect. With all due respect to the majority opinion, that is the very highest type of judicial legislation. If the act is to be so construed, then the law itself should specify and define what books are required to be kept for taxation purposes, and how they should be kept, or it should delegate that power to the tax officials.

Assuming, as the majority opinion does, that Act No. 2972 should read that account books, for taxation purposes, should be kept in either English, Spanish or any local dialect, the act does not specify or define what books shall be kept or how and in what manner they shall be kept. Neither does it delegate that power to anyone else. In its effort in trying to get out of one hole and make a void law a valid law, the majority opinion runs into another hole, which is equally fatal to the law. If, as it holds, Act No. 2972 should be construed to mean that account books, for taxation purposes only, should be kept in either English, Spanish or some local dialect, and the law does not specify what books shall be kept or how and in what manner they shall be kept, and that power is not delegated to anyone else, how can the law be enforced? Under such a construction, if a defendant should be charged with a violation of the law, what law has he violated, and upon what legal principle could a conviction be sustained? Upon that point, the law as drafted by the legislature is definite and certain. In legal effect, it provides that all account books for any and all purposes shall be kept in either English, Spanish or some local

dialect. The law as reconstructed by the majority opinion would be that such account books are to be confined and limited to account books for taxation purposes. Yet, the law does not specify what books shall be kept for that purpose, or how or in what manner they shall be kept, or what the entries shall contain. Neither is that power delegated. In the absence of such provisions, how could anyone be convicted of a violation of the law? For what crime could he be charged and what would be his offense?

Apparently, the majority opinion realizes the legal effect of its reconstruction of the law, for on page 36, the opinion says:

> "It seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in the books of account or forms subject to inspection for taxation purposes in any other language than either the English or Spanish language or a local dialect."

And on page 37, it says:

> "We would go so far as to hold that circular No. 467 of the Bureau of Internal Revenue which this Court once held beyond the power of the Collector of Internal Revenue to promulgate, and any other reasonable regulation of a similar nature, as within the power of the Philippine Legislature to sanction and entirely enforceable."

But it will be noted that Act No. 2972 does not say anything about "entries in the books of account or

forms subject to inspection for taxation purposes." Neither does it say anything about "circular No. 467 or any other reasonable regulation of a similar nature." Neither is there any delegation of power to anyone. Hence, it must follow that until such time as the law is amended by the legislature covering those points, it cannot be enforced. The act in question is in no way connected with, and does not in any manner refer to, the "Code of Commerce."

Act No. 2972 is entitled "An Act to provide in what language account books shall be kept, and to establish penalties for its violation," and Section 1 provides that it shall be unlawful for certain persons "to keep its account books in any language other than English, Spanish or any local dialect." The act is complete within itself and is separate and distinct from, and makes no reference whatever to, any other act.

The Code of Commerce is entitled "Merchants and Commerce in General," and deals with commercial bodies and commercial transactions.

If, as the majority opinion holds, Act No. 2972 should read "account books for taxation purposes," then Act No. 2972 shouln be confined and limited to questions of taxation, which are entirely separate

If, as the majority opinion holds, Act No. 2972 should read "account books for taxation purposes," then Act No. 2972 should be confined and limited to questions of taxation, which are entirely separate and distinct from "merchants and commerce in general." We have yet to learn that, legally speaking, questions of commerce and commercial transactions are synonymous with questions of taxation.

It is said that this court has never declared an Act of the Legislature unconstitutional. Assuming that to be true, it is no argument for or against the constitutionality of any law. On legal principle, Act No. 2972 was declared unconstitutional by the Supreme Court of the United States; an example which it would be well for this court to follow. However grave the responsibility may be, if a given law is unconstitutional, under our oath of office, it is our duty to so declare it.

We repeat that no law is cited in the majority opinion and that none will ever be found which holds the law in question to be constitutional. The majority opinion violates every rule above quoted of Sutherland on Statutory Construction.

For such reasons, I vigorously dissent.

Plaintiffs should have the writ prayed for in their petition.

(Sgd.) CHARLES A. JONES.

On February 13, 1925, counsel for petitioners presented the following:

(CAPTION AND TITLE OMITTED)
MOTION FOR REHEARING

COME NOW the petitioners by their undersigned attorneys and respectfully move the Court for a rehearing and reconsideration of the decision in the above entitled action for all the reasons set forth in the amended petition for prohibition to which reference is made as a part of this motion, and for the following additional reasons:

1. Act 2972 is not susceptible to the interpreta-

tion placed thereon by the decision of this Honorable Court.

2. Act 2972 if interpreted according to the decision of this Honorable Court is void for uncertainty, in that it fails to designate what books must be kept in the favored languages for inspection of the Bureau of Internal Revenue.

ARGUMENT

With due deference to the very learned decision of this Honorable Court, we respectfully submit that Act 2972 is as clear, certain and definite in its meaning as language could make it, and that the Court's interpretation thereof simply amounts to a judicial amendment to conform to its views as to the law which the Legislature should have enacted. The particular things which are required by Act 2972 to be kept in one or the other of the favored languages are "account books" according to the English version and "libros de contabilidad" according to the Spanish version. The forms prescribed by the Bureau of Internal Revenue for the returns of sales made by merchants and in which the merchant is required to fill in only the arabic numbers representing the amounts of the sales and the other returns made to the Bureau of Internal Revenue consisting of blank forms likewise filled out by the merchant are not, strictly speaking, account books, but rather Internal Revenue returns.

The books of account of a merchant strictly speaking are those prescribed for merchants by section 33 of the Code of Commerce which provides:

"Merchants shall necessarily keep:

1. A book of inventories and balances.
2. A daybook.
3. A ledger.
4. A copying book for letters and telegrams.
5. The other books required by special laws. Associations and companies shall also keep a book or books of minutes, in which there shall be entered all the resolutions which refer to the progress and business transactions adopted at the general meetings and at those of boards of directors."

Neither regulation No. 467 nor any of the other regulations of the Bureau of Internal Revenue with reference to returns for taxation purposes come within the purview of the "special laws" mentioned in the above quoted section. Therefore speaking technically or in other words from the standpoint of the very Legislature which passed Act 2972, it has no such application as given it by this Honorable Court. But even though it be granted that by a liberal interpretation, the phrase "account books" as employed in Act 2972 might be properly held to extend to returns for taxation purposes, by what possible logic can an intention on the part of the Legislature to exclude from such application the real and most important account books be justified? The predominating importance of regular commercial books of account over the return known as the "internal revenue sales book" is recognized by the Bu-

reau of Internal Revenue itself in regulation No. 467 the Young-Rafferty case and according to the terms as influenced by this Honorable Court's decision in of which, at the time of the passage of Act 2972, anyone keeping regular commercial books of account was exempted from keeping the internal revenue sales book in any language.

It must be borne in mind that the law was enacted both in English and Spanish, and none of the members of the Legislature could have labored under any misapprehension as to the meaning of the language employed by them. Certainly if there is any difference in importance between the regular commercial books of account and the Internal Revenue returns, judged from a legal standpoint, the former must prevail over the latter, and the effect of the interpretation of the Court is to hold that the phrase "account books" includes those of lesser importance and excludes those of greater importance.

Anothers circumstance which in our opinion renders the interpretation indefensible is the admission by the Bureau as disclosed by the proofs that the internal revenue sales books and all other returns required by the Bureau of Internal Revenue were, at the time of the passage of Act 2972, being filled out in English or Spanish by all Chinese merchants to whom those regulations applied. (See paragraph *a* of point 4, pages 76 to 98, inclusive, petitioners' printed brief.)

This being true the interpretation of this Honorable Court is equivalent to holding that the Legislature passed Act 2972 without any purpose whatever.

Again we fail to understand how the Court justifies limiting the application of Act 2972 to the particular "sales books and other records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue in effect when this action was begun." Certainly there is no language employed in Act 2972 warranting this limitation. If we may be pardoned for entering into such a minute analysis, it seems to us that to hold the phrase "account books" applicable exclusively to Internal Revenue returns, rather than to real account books, is judicial amendment, and that to limit the Internal Revenue returns to which the phrase "account books" applies, is going still another step beyond the province of the judiciary.

There is still another anomaly about the limitation to the returns required at the time the action for prohibition was commenced. If there is any legitimate relationship between Act 2972 and the Internal Revenue returns required at any time, it must be with those which were required at the time the law was passed, rather than with any regulations which may have been issued by the Bureau of Internal Revenue afterwards.

The interpretation of this Honorable Court is tantamount to holding that the Bureau of Internal Revenue had power to amend Act 2972 by enlarging its scope to cover tax returns not within its purview at the time enacted.

We respectfully ask that the Court reconsider its decision and grant the prohibition prayed for.

Manila, P. I.,
February 13, 1925.

Respectfully submitted,

GABRIEL LA O,
PALMA & LEUTERIO,
and GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS,
Attorneys for Petitioners.
302 Roxas Bldg., Manila, P. I.

On the 14th day of February, 1925, the Supreme Court issued the following order:

> "On consideration of the motion for rehearing presented by the attorneys for the petitioners in the case of Yu Cong Eng et al. *vs.* W. Trinidad, No. 20479, the Court voted to deny the motion. Acting Chief Justice Johnson did not take part. Justice Street was absent. Justice Johns dissents."

On February 20, 1925, the Clerk of the Supreme Court entered the following judgment:

(TITLE AND CAPTION ARE OMITTED)

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 5th day of February, 1925;

By virtue thereof, the petition for certiorari and prohibition prayed for by the petitioners is hereby denied, without costs, and it is ordered and decreed that the temporary injunction issued be dissolved, although under the construction given to the law it may well be doubted if the Government will care to proceed with the criminal prosecution, which question may be raised by demurrer in the lower court, should the government not dismiss the information.

(Sgd.) V. ALBERT,
Clerk, Supreme Court, P. I.

On February 20, 1925, counsel for petitioners presented the following:

(CAPTION AND TITLE OMITTED)

EXCEPTION AND NOTICE OF PETITION FOR WRIT OF CERTIORARI

Come now the petitioners in the above-entitled cause, by their undersigned attorneys, and except to the decision rendered by this Honorable Court on February 14th, 1925, and communicated to the undersigned on February 17th, 1925, denying their motion for a rehearing and reconsideration and also except to the final judgment entered therein.

Notice is hereby given that petitioners intend to petition the Supreme Court of the United States for a writ of certiorari for a review of the decision.

The grounds inter alia upon which petitioners intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court are:

That this Honorable Court erred in not holding Act 2972 of the Philippine Legislature unconstitutional and in violation of the Act of Congress of August 29, 1916, known as the Philippine Autonomy Act for the reasons stated in the amended petition for prohibition to which reference is hereby made as a part of this notice and that this Honorable Court further erred in its interpretation of said Act 2972 and that such interpretation amounts to judicial legislation amending said Act as a means of avoiding a declaration of its unconstitutionality.

Wherefore, petitioners pray that an appropriate order be entered fixing the bond, if any, which may be required and suspending the enforcement of that part of the decision and judgment which dissolved the temporary injunction until such time as the certiorari proceedings may be perfected.

Manila, P. I., February 20, 1925.

Respectfully submitted,

ALBINO Z. SYCIP,
GABRIEL LA O,
PALMA & LEUTERIO, and
GIBBS & McDONOUGH,
By (Sgd.) A. D. GIBBS,
Attorneys for Petitioners.
302 Roxas Bldg., Manila.

On the 24th day of February, 1925, the Supreme Court issued the following order:

"Considering the motion of counsel for the petitioners in case No. 20479, Yu Cong Eng et

al *vs.* W. Trinidad, etc., et al, excepting to th decision of this Court in denying the pet tioners' motion for rehearing and also excep ing to the final judgment entered therein an announcing their intention to apply to th United States Supreme Court for a writ c certiorari for the review of the aforesaid de cision and praying that execution of the judg ment be stayed and the record retained in th Court for further proceedings; exception no ed and the amount of the bond for the stay c the execution of judgment is hereby fixed a ₱1,000 to be filed with this Court within te days from notice hereof and to be approve by Mr. Justice Malcolm, after hearing the re spondents as to the sufficiency of the bon and solvency of the sureties. Acting Chie Justice Johnson did not take part."

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

I, V. Albert, Clerk of the Supreme Court of th Philippine Islands, do hereby certify that the fore going one thousand two hundred twenty-six printe pages contain a true and correct translation an transcript of the record of the case entitled Yu Con Eng and Co Liam, etc., petitioners, *vs.* W. Trinidad etc. et al, respondents, concerning certiorari an prohibition, bearing No. 20479 of the docket of th Supreme Court.

I further certify that the supersedeas bond referred to in the order of the Court last above transcribed was duly given by the petitioners and approved by the Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this .... day of June, A. D., one thousand nine hundred twenty-five.

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

END

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 19, 1925

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILED
JUL 23 1925
WM. R. STANSBURY
CLERK

No 623

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

vs.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA as Fiscal for the City of Manila and PEDRO CONCEPCION as Judge of the Court of First Instance of Manila,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the Philippine Islands, and Brief in Support of Petition, With Motion and Notice.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
FREDERIC R. COUDERT, JR.,
Counsel for Petitioners,
2 Rector Street,
New York City.

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that where an employee having been advanced wages quit before the end of the term without just cause, he was *prima facie* guilty of intent to defraud.

> "Without imputing any actual motive to oppress we must consider the natural operation of the statute here in question * * *" (p. 244).

In *Quong Wing* v. *Kirkendall*, 223 U. S. 59, the Court considered a Montana statute requiring payment of a license fee by all persons engaged in the laundry business other than the steam laundry business with a proviso that it should not apply to women so engaged where not more than two women were employed. In upholding the classification, however, Mr. Justice Holmes speaking for the Court remarked at p. 63:

> "*Another difficulty suggested by the statute is that it is impossible not to ask whether it is not aimed at the Chinese; which would be a discrimination that the Constitution does not allow. Yick Wo* v. *Hopkins*, 118 U. S. 356. It is a matter of common observation that hand laundry work is a widespread occupation of Chinamen in this country while on the other hand it is so rare to see men of our race engaged in it that many of us would be unable to say that they ever had observed a case. But this ground of objection was not urged and rather was disclaimed when it was mentioned from the Bench at the argument. It may or may not be that if the facts were called to our attention in a proper way the objection would prove to be real. * * * Therefore without prejudice to the question that we have suggested,

when it shall be raised, we must conclude that so far as the present case is concerned the judgment must be affirmed."

Lamar, *J.* dissented on ground that it was a revenue measure and made an arbitrary discrimination.

In the instant case it is clear beyond cavil that the Territorial Act is aimed at the Chinese and therefore "a discrimination that the Constitution and Act of Congress does not allow." It is established beyond peradventure of doubt that the burden of the statute will fall exclusively upon the Chinese.

II.

The Act is void because it denies to petitioners and others similarly situated the rights, privileges and immunities secured to them by the treaties between the United States and China, which secure to Chinese nationals most favored nation treatment.

"The rights of the petitioners as affected by the proceedings of which they complain are not less because they are aliens and subjects of the Emperor of China. *By the article of the treaty between this government and that of China concluded November* 17, 1880, 22 *Stat.* 827, *it is stipulated*: '*If Chinese laborers or Chinese of any other class now either permanently or temporarily residing in the territory of the United States meet with ill treatment at the hands of any other persons the Government of the United States will exert all its power to devise measures for their protection and to secure*

to them the same rights, privileges, immunities and exemptions as are enjoyed by citizens or subjects of the most favored nation and to which they are entitled by treaty."

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application, to all persons within the territorial jurisdiction without regard to any difference of race, color, or nationality; *and the equal protection of the laws means the protection of equal laws*" (Mathew, *J.*, in *Yick Wo* v. *Hopkins, supra*, p. 369).

Article IV of Convention regulating Chinese immigration, concluded March 17, 1894, specifically reaffirms the right of Chinese residents to the enjoyment of "most favored nation treatment." Malloy, Treaties of U. S., Vol. 1, p. 243. The Act of the Philippine Legislature is thus in contravention of the Treaty as well as of the Constitution and Act of Congress.

III.

This Court has jurisdiction to determine the validity of the Act untrammeled by the construction thereof adopted by the Philippine Court. That construction is clearly erroneous. It is completely at variance with the plain import of the language of the Act.

This Court is authorized to review the decision of the Supreme Court of the Philippine Islands, and may entirely disregard the construction placed upon the Act by that Court.

Section 27 of Philippine Autonomy Act confers upon this Court jurisdiction to review final judgments and decrees of the Supreme Court of the Philippine Islands, where the Constitution, or any statute or treaty of the United States is involved or brought in question. (1918 Suppl. Fed. Stat. Anot. p. 605).

The foregoing enactment was modified by Section 7 of an act to amend the Judicial Code, approved Feb. 13, 1925, but only to the extent that Philippine decisions become reviewable by certiorari only, instead of by error and appeal.

Mr. Justice Brandeis, delivering the opinion of the Court in *Philippine Sugar etc. Co.* v. *Philippine Islands,* 247 U. S. 385, 390, declared:

> "This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. *Phoenix Ry Co.* v. *Landis,* 231 U. S. 578. *But that disposition may not be yielded to where the lower court has clearly erred. Carrington* v. *U. S.,* 208 U. S. 1. Here the construction adopted was

> rested upon a clearly erroneous assumption as to an established rule of equity. The Supreme Court erred in refusing to consider the evidence of mutual mistake; and its judgment must be reversed."

In *Yick Wo* v. *Hopkins, supra,* at p. 366, the court declared that it was—

> "constrained at the outset to differ from the Supreme Court of California upon the real meaning of the ordinances in question."

It is submitted that the construction by the Philippine Court is so fanciful and so at variance with the plain import of the language of the Act as to require little comment. "No books of account shall be kept, etc." can scarcely be held to indicate an intent to permit books in any language if certain non-enumerated books are kept in the specified tongues.

Indeed, the majority opinion conceded that if the plain language of the Act meant what it said, then it would probably be unconstitutional.

> *"A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional."*

But in order to save the Act—and the face of the legislature—the court struggled to devise a construction that would bring the Act within the pale. In pursuit of this purpose, the court was able to conjure up an occult constitutional legis-

lative intent, very different from the plain language of the sweeping prohibition set forth in the Act.

> "Act No. 2972 is a fiscal measure. It should be so construed if possible as to effectuate legislative intent as collected from the occasion for the law, the circumstances under which it was enacted, the mischief to be remedied, and the policy which dictated its passage. *It should be so construed if possible as to avoid conflict with the Constitution, although such construction may not be the most obvious or natural one.* Giving, therefore, to the law a meaning which will carry out the main governmental purpose and which will permit us to sanction its constitutionality, it seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in books of account or forms subject to inspection for taxation purposes in any other language than either English, Spanish or a local dialect, although permitting all merchants to execute their commercial transactions or operations in any language or dialect, they may prefer, and although permitting them to keep such other books of account as their personal convenience may dictate and in a language which will come most easily to them * * *."

Thus, in straining after a constitutional construction of a palpably invalid law, the court enacted a new law.

Moreover, the Act as amended by this judicial legislation is still defective. The court in its opinion recognizes that

> "It has not escaped our notice that the law does not specify what books shall be kept."

We search in vain to find in the Act any requirement that account books of any sort be kept. The Act is silent on that point. The inevitable result must be uncertainty and confusion.

How is the unfortunate merchant to know which of his books of account, under the lower court's construction, are to be kept in the designated languages, and which may be in the language of his preference? It would seem that this should be enough to make the law invalid. The decision of the Philippine court is the boldest sort of judicial legislation and is legally unjustifiable, however much we may sympathize with its struggle to avoid the horns of the dilemma by attempting to placate both legislature and victims.

It is interesting to note the attitude of the Philippine Court when confronted by a regulation of the Collector identical in substance with the Act as reconstructed in this case. In *Young* v. *Rafferty*, 33 Phil Reports 556, decided prior to enactment of Act No. 2972 the Supreme Court of the Philippines had before it a regulation of the Collector requiring all merchants to keep a daily sales book in English or Spanish. It was held that in thus prescribing certain languages the Collector had exceeded his authority to make necessary regulations not inconsistent with law, to carry out the Revenue Act. In reaching this conclusion, the Court stated at p. 559:

> "We apprehended that no one will deny that sales could be recorded in a bound volume such as is specified using the tabulated form desired by the Collector, in any modern language. In other words all the information could be recorded in the designated book in

> the required form in Chinese or in a local dialect or in some other language as accurately as it could be recorded in English or Spanish."

Again at p. 560,

> "But however this may be, the figures discussed show that the regulation does affect a large and important class of business men not only Chinese, *but Filipinos as well although it may be that the burden falls most heavily upon the Chinese.* To require this number of business men to engage someone familiar with English or Spanish to keep a record for them which will comply with the regulation would in many instances impose a greater burden upon them than the entire amount of taxes which they have to pay."

It is significant that Filipinos as well as Chinese were affected by the disputed regulation. Moreover the Philippine Supreme Court then saw no grave necessity for such an invasion of personal liberty, nor did the Court hesitate to recognize the injustice of imposing such requirements upon the Chinese merchants.

No construction can conceal the fact that this is a blow aimed to drive out the Chinese merchant. That purpose cannot be effected in that fashion in the teeth of the Constitution, the Act of Congress and the Treaty. The local Act is hence invalid and must yield.

CONCLUSION.

The decree of the lower Court should be reversed and a writ of prohibition directed to issue against respondents restraining them and each of them from enforcement of Act No. 2972, with such other and further relief as may seem just and proper.

Respectfully submitted,

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
FREDERIC R. COUDERT, JR.
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

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No. 623.

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

against

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA, as Fiscal for the City of Manila and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila,

Respondents.

BRIEF ON BEHALF OF PETITIONERS.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected, Petitioners, vs. W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA, as Fiscal for the City of Manila and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents.	No. 623.

BRIEF ON BEHALF OF PETITIONERS.

(ITALICS THROUGHOUT ARE OURS.)

Nature of the Case.

This case involves a petition for prohibition and injunction against the enforcement by criminal prosecution of a penal law of the Philippine Islands known as the "Chinese Bookkeeping Law." This law renders it unlawful for any business house in the Philippines

> "to keep its account books in any language other than English, Spanish or any local dialect."

Petitioner Yu Cong Eng, upon being prosecuted criminally under the law for keeping his account books in Chinese characters, sought injunction and prohibition from the Supreme Court of the Philippine Islands against the lower court and the prosecuting officials, joining with him as petitioner Co Liam, for the benefit of all other persons similarly situated and affected. Petitioners attacked the law as unconstitutional in that it sought to deprive them and the other Chinese of their liberty and property without due process of law and to deny to them the equal protection of the laws.

The Philippine Supreme Court entertained jurisdiction of the original petition thus presented, and, whereas it conceded the unconstitutionality of the law as written, was able to so construe the legislation as to satisfy a majority of that Court of its constitutionality.

Upon the motion of the petitioners and the suggestion of His Excellency, Sao-Ke Alfred Sze, Chinese Minister to the United States, this Honorable Court granted a writ of certiorari to the Supreme Court of the Philippines on October 19th, 1925.

Upon January 4th, 1926, on the motion of petitioners, concurred in by his Excellency, the Chinese Minister, this cause was advanced and set down for argument on April 12th, 1926.

Statement of Facts.

Petitioners are Chinese nationals legally within United States territory, of age and residents of the City of Manila, where they are engaged in commercial business (R., pp. 145, 146, 175).

Respondent W. Trinidad is the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands, with his office and residence in the City of Manila (R., p. 538).

Respondent Eulogio P. Revilla is the duly appointed, qualified and acting Fiscal or prosecuting attorney

of the City of Manila and a resident of the said city (R., pp. 2, 47).

Respondent the Honorable Pedro Concepcion is one of the duly appointed, qualified and acting judges of the Court of First Instance of the City of Manila, and also a resident of said city (R., pp. 2, 47).

On the 21st day of February, 1921, the Philippine Legislature enacted and approved Act No. 2972 in the following language:

> "No. 2972. AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.
>
> "*Be it enacted by the Senate and House of Representatives of the Philippines in legislature assembled and by the authority of the same:*
>
> "Section 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.
>
> "Section 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.
>
> "Section 3. This Act shall take effect on November first, Nineteen hundred and twenty-one.
> "Approved, February 21, 1921."
>
> (R., pp. 2, 47).

On March 2nd, 1923, the respondent W. Trinidad, in his capacity as Collector of Internal Revenue, inspected and *seized the account books* of petitioner Yu Cong Eng, which are in the Chinese language, and recommended to the respondent City Fiscal the prosecution of said petitioner for violating Act No. 2972

"by keeping his books of account from January 1, to February 27, 1923, in Chinese and not in English, Spanish or any native dialect as required by law" (R., p. 1019).

As a result of said recommendation the respondent City Fiscal duly filed before the respondent the Honorable Pedro Concepcion, as Judge of the Court of First Instance of the City of Manila, a criminal complaint against the petitioner Yu Cong Eng charging him with the said acts as a "*Violation of the Accounting Law*" (R., p. 13).

A warrant for the arrest of the said petitioner Yu Cong Eng was issued by the said the Honorable Pedro Concepcion and said petitioner was held under bond thereunder (R., pp. 13, 154).

The respondents, the Collector of Internal Revenue, the City Fiscal and the Honorable Pedro Concepcion, intend and threaten to seize the books of petitioner Co Liam and all other Chinese guilty of acts similar to those committed by the said petitioner Yu Cong Eng (R., p. 15).

Operation and Effect of the Law.

Chinese merchants were established in the Philippine Islands before the arrival of the Spaniards in 1520, and the Chinese written language, the only language of importance not permitted by this law to be employed, is an ancient, scientific language employed by the Chinese, Japanese and Koreans, who constitute more than one-fourth of the entire population of the world (R., pp. 1004, 1181).

There are 43 native languages divided into 87 local dialects in the Philippine Islands. One of such local Filipino dialects is employed by as few as 983 persons in the Islands (R., p. 954, Ex. F).

There are approximately 85,000 merchants of all nationalities in the Philippines. Of this number about 71,000 are Filipinos, 1,500 are American, Spanish or British, and of the remaining 12,500 approximately 12,000 are Chinese. These 12,000 Chinese merchants transact more than 60% of the total business done by all the merchants in the Philippine Islands, and they are the principal distributing factors for imported goods and the principal gatherers of goods for exportation, throughout the Islands (R., pp. 1170, 953, 376).

The petitioner Yu Cong Eng is a Chinese merchant engaged in the lumber business at No. 696 Juan Lima, Manila, P. I., and neither reads, writes nor understands the English or Spanish language or any Filipino dialect (R., p. 146).

Yu Cong Eng keeps the books of account of his business in the Chinese language (R., p. 147).

Neither Yu Cong Eng nor his bookkeeper is able to keep his books in any language other than Chinese (R., p. 149).

The employment of a bookkeeper, if sufficient were available familiar with the prescribed languages, would place the books of Yu Cong Eng effectually beyond his control (R., p. 151).

It will be impossible for Yu Cong Eng to operate his business if he is compelled to keep his books in any language other than Chinese, because without first hand knowledge of the contents of his own account books one cannot do business (R., p. 150).

The petitioner Co Liam is a Chinese shop keeper, conducting a small retail merchandise business, commonly known in the Philippines as a Chinese *tienda,* at No. 364, Calle Santo Cristo, Manila (R., p. 175).

Co Liam keeps his books in the Chinese language and neither he nor his employee reads, writes, or understands any language other than Chinese so as to permit

their keeping of books in such other language (R., pp. 176, 177).

Co Liam carries a stock of goods of the value of about P. 6000, and his profits are so small that he cannot afford to employ a bookkeeper familiar with the prescribed languages (R., pp. 176, 177).

If compelled to keep his books in any language other than Chinese Co Liam will be unable to continue the operation of his business (R., p. 176).

Practically all of the Chinese merchants in the Philippine Islands keep but one set of account books and that in the Chinese language (R., p. 1017).

Not to exceed one per cent. (1%) of the Chinese merchants in the Philippine Islands are able to read, write or understand any language other than Chinese sufficiently well to keep their account books or transact business in such other language (R., pp. 417, 492).

The testimony of all of the numerous Chinese merchants examined herein bears out the foregoing statement (R., pp. 168, 207, 228, 260, 283, 298, 314, 325, etc.).

To keep their books of account in any language other than Chinese would necessitate the hiring of foreign bookkeepers by practically all the Chinese merchants, who would even then be entirely dependent upon interpreters for hearsay knowledge of their own business (R., pp. 414, 415, 474, 478, 492).

Approximately 8,500 of the 12,000 Chinese merchants are small retail shopkeepers whose average annual net profits do not exceed P. 500 (R., p. 957).

These Chinese shopkeepers either keep their own books or have Chinese clerks at very low wages to do so (R., p. 381).

The annual wages of Filipino bookkeepers range from P. 900 to P. 6000 (R., pp. 378, 419, 477).

Consequently the great majority of Chinese merchants cannot afford to hire foreign bookkeepers (R., pp. 378, 477).

There are no considerable number of unemployed competent bookkeepers available in the Philippines capable of keeping books of account in English, Spanish or any local dialect, to fill the positions which would be created by the enforcement of the Bookkeeping Act (R., pp. 417, 492, 501).

For the foregoing reasons, if they are compelled to keep their books of account in any language other than Chinese, the great majority of the Chinese merchants in the Philippines cannot continue in business.

The foregoing facts are clearly confirmed by the testimony of Mr. H. B. Pond, Vice-President and General Manager of the Pacific Commercial Company, the largest single importing establishment in the Islands, by the testimony of the Hon. William S. Nolting, ex-Collector of Internal Revenue for the Philippines, ex-Insular Auditor and President and Manager of the Bank of the Philippine Islands, and by that of the late Dr. T. D. Pardo de Tavera, formerly a member of the Philippine Commission and late Chief of the Philippine Library & Museum (R., pp. 379, 420, 422, 440, *et seq.*).

Over one hundred of the most important and largest non-Chinese firms in the Philippines have certified in writing that it is absolutely impracticable for the Chinese merchants to comply with the terms of the Bookkeeping Law and that the enforcement of this law will render it impossible for the great majority of the Chinese merchants to continue in business (R., p. 16).

The same conclusion has been expressed in writing by the American Chamber of Commerce of China, by the American Chamber of Commerce at Tientsin, China, by the Seattle, Portland and San Francisco Chambers of Commerce and by the Merchants' Association of New York (R., pp. 23-29).

Purpose of and Necessity for the Law.

The Accounting or Bookkeeping Law is a general penal law, concerning which the respondent Collector of Internal Revenue has testified as follows:

> "* * * we are dealing with the Chinese Accounting Law, which is a general law. It does not belong to the Bureau of Internal Revenue" (R., p. 608).

The legislative debates upon the law evidence clearly that the books intended to be covered thereby are *all* the account books of merchants (R., pp. 972, *et seq.*).

The Bureau of Internal Revenue considers itself interested in *some* only of the books covered by the provisions of this law (R., pp. 993, 1098).

The Philippine Supreme Court acknowledges that the law was immediately and popularly known as the "Chinese Bookkeeping Law" (R., p. 1155).

The Bureau of Internal Revenue admits that the only possible benefit to it to be derived from the enforcement of the law is "to facilitate the inspection" of taxpayers' books (R., p. 938).

No other governmental department seems to have claimed any benefit to be derived from the enforcement of the law.

The 12,000 Chinese merchants in the Philippine Islands now pay and for many years last past have been paying more than 60% of the taxes levied on the total mercantile transactions of the Islands (Ex. C, R., pp. 953, 1184).

The Chinese merchants compare very favorably as to integrity and general commercial honor with those of other nations doing business in the Philippine Islands (R., pp. 379, 425).

The Bureau of Internal Revenue has never experienced and does not now experience any difficulty in

finding and employing enough competent and honest Chinese accountants to make the necessary inspections of Chinese books (R., pp. 150, 423, 424, 499).

In fact, the respondent Collector of Internal Revenue in his recommendation for the prosecution of the petitioner Yu Cong Eng, offered the prosecuting authorities the services of one of the Bureau's Chinese accountants (R., p. 1019).

Examiners of the Bureau of Internal Revenue have regularly inspected the books of the Chinese merchants in the Chinese language (R., pp. 218, 221, 229, 236, 244, etc.).

In every instance in which the Bureau of Internal Revenue suspects under-declarations by Chinese merchants, it is able to and does cause the books of such merchants to be inspected by Chinese accountants (R., p. 941).

The Chinese as well as the other merchants of the Philippine Islands were at the time of the passage of this law, and they now are, properly filling out in arabic numbers all the forms prescribed and printed in English and Spanish by the Bureau of Internal Revenue as a basis for the assessment of taxes (R., pp. 931, 933, 934).

In the opinion of the Hon. William T. Nolting, rendered in the course of his testimony herein, the enforcement of this law will be prejudicial not only to the Chinese merchants but to the Philippine Government as well (R., pp. 421, *et seq.*).

The ostensible purpose of and necessity for the enactment of this Accounting or Bookkeeping Law is thus formally stated by the Hon. Vicente Urgello, the representative who introduced the original bill in the Philippine legislature:

> "Not all the merchants established in the Philippine Islands being of the same nationality, *some of them are keeping their account books in*

> *their native language. This renders the examination of these books by government agents somewhat difficult,* as in many cases the co-operation of a translator is required, which is a burden for the public exchequer.
>
> Uniformity and facility of examination and revision of these books require that the same be kept in English or Spanish by the merchants, whether individuals or corporations.
>
> This is the purpose of the bill herewith" (R., p. 967).

The Committee in charge of the bill, being convinced that *certain* merchants would not be able to comply with the law for the reason among others that they would not be able to obtain bookkeepers, proposed an amendment to the bill giving the Secretary of Finance power to

> "* * * make such exceptions as he may consider necessary in favor of persons for whom, in his judgment and upon examination and investigation, it may be *impossible to comply with the provisions of this act*" (R., pp. 968, 972).

The Philippine legislature rejected this proposed amendment with knowledge that its movers intended it to "give equal protection and opportunity to all" and particularly to the Chinese (R., pp. 977, 974).

Subsequently, in the great agitation created by the passage of the law, the Philippine Executive Department recommended either a substitute law or a practically indefinite postponement of the effective date of this law because of its non-enforceability. All such suggestions were rejected by the Legislature (R., pp. 990-998, 1058-1117).

During the course of the debates upon such recommendations it appears that the Philippine Bureau of Internal Revenue had admitted that

> "* * * in Mindanao and other distant parts of the Archipelago, the Chinese, though they be willing, cannot find competent men to keep their books of account in English, Spanish or a local dialect" (R., p. 996).

One of the most ardent proponents of this law, Sr. Gallares, upon being questioned in the course of the debates as to the possible detrimental effect upon the Philippines involved in driving the Chinese merchants out of business by the enforcement of this law, said:

> "On the contrary, our trade would be stimulated by the disappearance of a powerful rival * * * because the Filipinos would go into business and take the place of the Chinese * * *" (R., p. 986).

The Seattle and Portland Chambers of Commerce in their protest against this law characterize it directly as

> "* * * an arbitrary and unfriendly act toward a friendly nation" (R., p. 26).

A similar opinion is expressed by the New York Merchants' Association (R., p. 29).

The necessarily disastrous effect of the enforcement of this law upon the Chinese merchants of the Philippine Islands is recognized in the protests against the legislation voiced by the Chinese and non-Chinese business community, and the various Chambers of Commerce (R., pp. 16, 23-29).

The enactment of this law has called forth additional vigorous protests from the Chinese Foreign Office (R., p. 999), from the Bureau of Insular Affairs of the War Department (R., p. 1000), from the Committee on the Judiciary and the Committee on Insular Affairs of the American House of Representatives, as well as from a further one hundred members of that body (R., pp. 1002-1012).

The Bureau of Insular Affairs of the War Department, speaking on behalf of that Department in its letter to the Governor General, characterizes the law as follows:

> "*We are of the opinion here that the law is fundamentally unwise.* The object of it is apparrent, and any reasonable measures to prevent frauds on the revenue collections are not open to criticism. It is felt, however, that *frauds may be committed in any language, and while keeping books in Chinese, or other foreign languages, is an inconvenience to the tax collector, this inconvenience is greatly overbalanced by that of the merchant having his books kept in a language which he does not understand. A reciprocal provision in China would meet our serious protest*" (R., p. 1000).

Brief of the Argument for the Petitioners.

It would seem that a mere statement of the facts should suffice to demonstrate the confiscatory, arbitrary and unequal nature of this legislation, aimed as it is directly at the lives and property of the Chinese merchants of the Philippines, and having no reasonable relation whatever, even colorable, to any object within the competency of the Philippine Legislature to accomplish.

In any event, a brief analytical consideration of the law and its purpose and effect, in accordance with constitutional principles, must establish its invalidity as written, and the clear impossibility of correcting it, as the Philippine Supreme Court has sought to do, by judicial legislation.

The guaranties of the fundamental personal rights declared in the Federal Constitution are applicable in the Philippines, not only inherently but specifically by the direct extension thereof to those islands by the provisions of the Philippine Autonomy Act.

This Chinese Bookkeeping or Accounting Law by its natural and intended operation and effect deprives an important class of the Philippine community of the right to employ its own language in private business or commerce.

To thus restrict the means of doing all business is to effectually destroy the power to do any business.

No alleged public necessity has ever been found sufficient to justify the destruction of all right and power in an important class of individuals to engage in business generally. Such prohibition is upon its face so burdensome upon the Chinese as to be utterly confiscatory, and without regard to the purpose sought to be served thereby, could not be sustained. Moreover, when the alleged purpose, as here, is found to be trifling and specious, the enforcement of such a law constitutes the clearest deprivation of liberty and property without due process of law.

Furthermore, when it is apparent that the Chinese alone of the 85,000 merchants in the Philippines are denied the use of their own language by this Act, which permits to all others what it denies to them, without any reasonable justification or necessity for the classification, the invalidity of the legislation as a denial of the equal protection of the laws becomes clear.

No paramount social necessity for any restriction upon the right of the Chinese to use their native tongue in business in the Philippines is shown to exist, and no such necessity can be shown for singling out for prohibition the Chinese language, an ancient, scientific, and widely known written language, when local Filipino dialects, unscientific and known by as few as a thousand souls, are permitted to be employed.

The purpose of the classification is obvious. It is a blow aimed directly at the economic lives of the Chinese merchants of the Philippines, arbitrary and

unjust and without substantial pretence of necessity or reason to support it.

The "most favored nation" clauses of the treaties with China also condemn this law, permitting as it does to the British and Spanish residents of the Philippines what it denies to the Chinese alone.

The majority of the Philippine Supreme Court, in their anxiety to uphold the legislature, have attempted a construction of the legislation which is entirely fanciful and wholly at variance with the plain terms and import of the Act. In doing so they have only succeeded in adding greater indefiniteness to the already fatal constitutional objections to the law.

Our more detailed argument upon the questions involved herein will be considered under the following points:

I.—Act No. 2972 is void as contrary to the prohibitions of the Philippine Bill of Rights and the Fifth Amendment to the Federal Constitution.

II.—The Act is also void because it denies to petitioners and others similarly situated the rights, privileges and immunities secured to them by the treaties between the United States and China which assure to Chinese nationals "most favored nation" treatment.

III.—This Court may determine the validity of the Act untrammeled by the construction thereof adopted by the Philippine Supreme Court. That construction is clearly erroneous and wholly at variance with the plain import and language of the Act.

ARGUMENT.

I.

Act No. 2972 is void as contrary to the prohibitions of the Philippine Bill of Rights and the Fifth Amendment to the Federal Constitution.

It has long been clear, quite apart from the direct extension of those fundamental guaranties to the Philippine Islands by the provisions of the Philippine Bill of Rights, that the prohibitions embodied in the Fifth Amendment to the Federal Constitution against the deprivation of liberty and property without due process of law and against the denial of the equal protection of the laws, are fully operative in the Philippine Islands. *Balzac* v. *Porto Rico*, 258 U. S. 298, 312.

The Philippine Bill of Rights itself, in the precise language of the Fifth and Fourteenth Amendments, provides:

> "That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." (Sec. 3 of the Philippine Autonomy Act, 39 Stat. L. 545, 1918 Supp. Fed. Stat., Ann. p. 593.)

The application and construction of this fundamental law is thus explained in *Serra* v. *Mortiga*, 204 U. S. 470 at 474:

> "It is settled that by virtue of the bill of rights enacted by Congress for the Philippine Islands, 32 Stat. 691, 692, that guarantees equivalent to the due process and equal protection of the law clause of the Fourteenth Amendment, the twice in jeopardy clause of the Fifth Amendment, and

> the substantial guarantees of the Sixth Amendment, exclusive of the right to trial by jury, were extended to the Philippine Islands. It is further settled that the guarantees which Congress has extended to the Philippine Islands are to be interpreted as meaning what the like provisions meant at the time when Congress made them applicable to the Philippine Islands. *Kepner* v. *United States,* 195 U. S. 100.
>
> For the purpose, therefore, of passing on the errors assigned we must test the correctness of the action of the court below by substantially the same criteria which we would apply to a case arising in the United States and controlled by the bill of rights expressed in the amendments to the Constitution of the United States."

We must be guided, consequently, in testing the constitutionality of Philippine legislation, by exactly the same considerations, applicable in favor of citizen and alien alike, which have moved our courts in their decisions involving Federal and State legislation under the Fifth and Fourteenth Amendments respectively to the Federal Constitution.

> *Tonawanda* v. *Lyon,* 181 U. S. 389, 391;
> *Kepner* v. *U. S.,* 195 U. S. 100, 124;
> *Yick Wo* v. *Hopkins,* 118 U. S. 356.

This Court has but recently held, *Meyer* v. *Nebraska, infra,* that the right to the free use of language is within the protection of the Constitution.

It cannot be questioned, therefore, that the prohibition against the use of one's native tongue in the conduct of one's business and the keeping of one's books of account therein, constitutes some restraint upon a natural personal and property right, which, to be sustainable, must find justification in the principles establishing the constitutional relations between the government and the governed.

No better statement of the indispensable criteria of constitutionality in cases involving the abridgment of personal and property rights, may be found than that repeated and readopted by this Court in its decision in *Dobbins* v. *Los Angeles,* 195 U. S. 223, at 236:

> "In *Lawton* v. *Steele,* 152 U. S. 133, 137, Mr. Justice Brown, speaking for the court, said upon this subject:
>
> > 'To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.'
>
> "And, again, in *Holden* v. *Hardy,* 169 U. S. 366, 398, the same justice, again speaking for the court, said:
>
> > 'The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class'."

We must seek, consequently, first, the operation and effect of the Chinese Bookkeeping Law, then its purpose, and finally, the relationship between such purpose and effect. In so doing we must inevitably find that the law, upon its face and by its natural operation and

effect, deprives petitioners and the other Chinese similarly situated, of their liberty and property without due process of law and denies to them the equal protection of the laws.

From the overwhelming evidence in the case it must be accepted as entirely clear that unless the 12,000 Chinese merchants in the Philippine Islands are permitted to keep their books of account in their native language, the result will be the destruction of all but the largest of them.

The vast majority of these Chinese merchants know no language other than their own and cannot keep their account books in any language other than Chinese. The necessary bookkeepers are not available to keep the books of these Chinese merchants in any language other than Chinese, and even though such bookkeepers were available, the cost to the Chinese merchants of hiring them would, in most cases, exceed the total annual profits of such merchants. Finally, the Chinese merchants would not be able to understand their own books if they were kept in any other language.

This law as written will, even if physically enforceable, place the Chinese merchants' books entirely beyond their power and comprehension. It requires no argument to demonstrate that such a state of affairs must inevitably drive the Chinaman out of business, for, as the petitioner Yu Cong Eng has naïvely said:

> "for a merchant the books of account are the eyes of his business, and without the eyes, he cannot do business" (R., p. 150).

What possible justification can be offered for legislation leading directly to such an end?

The very briefest examination of the facts herein will disclose the trifling apology of social purpose and necessity here submitted to thinly mask the object of the law which is to be clearly found in its logical effect.

No government department other than the Bureau of Internal Revenue offers the slightest excuse for this general penal law, and that department can only suggest that the law will "*facilitate the inspection*" of taxpayers' books which are "*somewhat difficult*" to examine in the Chinese language!

Where is there shown the slightest real necessity for thus destroying these Chinese merchants?

The Chinese merchants have always made the necessary returns to the taxing authorities of the Philippines.

The Bureau of Internal Revenue can obtain sufficient competent and honest Chinese accountants, if it will, to examine the books of all the Chinese merchants, and it has always been able to inspect Chinese books and to uncover any under-statements therein.

In this situation what purpose can the law serve except possibly to save a few dollars in administrative expenses to the Bureau of Internal Revenue?

Such an object cannot possibly constitute sufficient basis in reason or necessity for legislation so highly penal and destructive!

What reason exists for a classification proscribing the Chinese language, when local dialects, employed by as few as 983 persons, are permitted? Can books in dialects so little known be more readily examined?

There can be little doubt as to the true object of this law, in the light of the legislative debates at the time of its passage and its peculiar and destructive effect upon the Chinese merchants alone, the "powerful rivals" who do most of the mercantile business of the Philippines, and without whom, as all but the very short-sighted know, the whole economic life of the Islands must be seriously impaired.

This law is a general penal law, aimed directly at the Chinese, and convenience to the taxing authorities, if in fact there be any, is but an afterthought conjured up to disguise its true nature.

A test of this law by the standards set by this and other Courts, leaves little room for debate as to its invalidity.

The Supreme Court of the Hawaiian Islands had occasion to consider a law almost identical in language and alleged purpose in *The King* v. *Lau Kiu*, 7 Haw. Rep. 489.

The legislation before that Court provided that:

> "No wholesale or retail license shall be granted to any person except upon the express condition that such licensee shall at all times keep full, true and correct books of account of all business transacted by him in connection with such licensed business, *which books of account shall be kept in the English, Hawaiian or some European language.*"

Defendant, a Chinaman, was convicted of a violation of the statute.

The Hawaiian Court, in declaring the Act invalid, condemned it in the strongest terms:

> "This legislation is an attempt to impose a restriction and a burden upon the exercise of a lawful employment which borders upon tyranny" (p. 494).

And in considering the clause requiring account books to be kept in certain languages, that Court said:

> "The Legislature cannot, without infringing upon liberty and the rights of property, thus discriminate. *The argument that the Chinese language, which is evidently the one that is sought to be proscribed by this Act, is occult and understood by few other than the Chinese themselves, is of no force, for there are European languages that are as little understood in this Kingdom as Chinese, and yet the books of account are by this Act allowed to be kept in them*" (p. 496).

The Hawaiian Act purported upon its face to be in advancement of the public welfare by preventing frauds. The only purpose, spelled out of the Philippine Act with great difficulty, and after the fact, is slight governmental convenience, which cannot under any circumstances be treated as a matter of public interest or general welfare.

In *Meyer* v. *Nebraska*, 262 U. S. 390, this Court, considering a similar attempted limitation upon the use of foreign languages, refused to sustain legislation making it unlawful to teach foreign languages to children. The statute was held to be an invasion of the liberty of foreign language teachers to pursue their occupation as well as that of parents to direct the education of their children.

If States may not exercise the police power to bar the use of foreign languages in schools, *a fortiori*, it is not permissible under the merest color of a revenue law to prohibit employment of a foreign tongue in purely private business.

Concisely and authoritatively are the principles enunciated by Mr. Justice McReynolds, speaking for the Court, in the *Meyer* case:

> "The problem for our determination is whether the statute as construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment. 'No state shall * * * deprive any person of life, liberty, or property, without due process of law.'
>
> While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but *also the right of the individual to contract, to engage in any of the common occupations of life,* to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dic-

> tates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. * * * *The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.* Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts. *Lawton* v. *Steele*, 152 U. S. 133, 137." (p. 399).
>
> "We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the state" (p. 403).

It is submitted that the Act in the instant case is far less justifiable than that considered in the *Meyer* case. The former by its express terms and natural operation will drive an entire class of the community from the field of private commerce,—a field in which the police power must surely be exercised with greater circumspection than in that of education. This is the sort of prohibitory legislation which is the least justifiable under any power, as it is

> "* * * discrimination * * * imposed upon the conduct of ordinary private enterprise covering the entire field of industry * * *."
>
> *Terrace* v. *Thompson*, 263 U. S. 197, 221.

In determining the invalidity of the Oregon School Law, this Court speaking by Mr. Justice McReynolds, found that,

> "The inevitable practical result of enforcing the Act under consideration would be destruction of appellee's primary schools, and perhaps all

other private primary schools for normal children within the State of Oregon."

Pierce v. *Society of Sisters*, 268 U. S. 510, 534.

The Act here in question effectually denies to the overwhelming majority of Chinese merchants in the Philippine Islands the right to engage in private business and, therefore, of earning a livelihood. A necessary incident of the right to engage in any commercial occupation is the keeping of books of account. Without proper account books no business of any size can go on. This law, moreover, deprives the professional Chinese bookkeepers, employed by the larger Chinese merchants, of their means of livelihood, and is an interference with a lawful occupation no less objectionable than the destruction of the occupation of foreign language teachers. Only the most extraordinary considerations of public welfare should be offered to justify so violent an invasion of individual liberty, yet no real purpose of social importance or necessity is here submitted.

In *Truax* v. *Raich*, 239 U. S. 33, and in *Adams* v. *Tanner*, 244 U. S. 590, this Court frustrated legislative attempts to arbitrarily interfere with the pursuit of lawful occupations.

The former involved consideration of an Arizona penal statute in the following language:

> "Section 1. Any company, corporation, partnership, association or individual who is, or may hereafter become an employer of more than five (5) workers at any one time, in the State of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than eighty (80) per cent qualified electors or native-born citizens of the United States or some subdivision thereof" (p. 35).

Plaintiff Raich was neither a qualified elector nor native born. He was employed as a cook by defendant

Truax who had in his employ at the time nine workers. Truax informed plaintiff that solely by reason of the requirements of the law he intended to discharge him. Plaintiff thereupon filed a bill in the District Court seeking a decree declaring the law unconstitutional under the Fourteenth Amendment and restraining enforcement thereof.

An interlocutory injunction was granted below and on appeal sustained by this Court.

This Court, by Mr. Justice Hughes, declared,

> "*The right to earn a livelihood and to continue in employment unmolested by efforts to enforce void enactments should similarly be entitled to protection in the absence of adequate remedy at law*" (p. 38).

And at page 41:

> "It is sought to justify this act as an exercise of the power of the State to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. *But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. Butchers' Union Co.* v. *Crescent City Co.*, 111 U. S. 746, 762; *Barbier* v. *Connolly*, 113 U. S. 27, 31; *Yick Wo* v. *Hopkins, supra; Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, 590; *Coppage* v. *Kansas*, 236 U. S. 1, 14. If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no

> answer to say, as it is argued, that the act proceeds upon the assumption that 'the employment of aliens unless restrained was a peril to the public welfare.' The discrimination against aliens in the wide range of employments to which the act relates is made an end in itself and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor is necessarily involved. It must also be said that reasonable classification implies action consistent with the legitimate interests of the State, and it will not be disputed that these cannot be so broadly conceived as to bring them into hostility to exclusive Federal power. The authority to control immigration—to admit or exclude aliens —is vested solely in the Federal Government. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 713. *The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work.* And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality."

The Philippine Act quite as effectually deprives the Chinese of "the means of earning a livelihood."

The Arizona statute represented an avowed attempt to discriminate against alien labor. Its purpose was frankly revealed in its title. The purpose of the Philippine Legislature was quite as clear but not as frankly stated.

In *Adams* v. *Tanner, supra*, this Court was called upon to determine the validity of a Washington law declaring it

> "unlawful for any employment agent, his representative, or any other person to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto" (p. 591).

Appellants, employment agents, filed a bill to have respondents restrained from undertaking enforcement thereof. The bill was dismissed, and upon appeal to this Court, the judgment below was reversed.

Here again a legislature had attempted under the guise of police regulation to invade the ever-narrowing province reserved to individual liberty under the Fourteenth Amendment. This Court, however, through Mr. Justice McReynolds, recognizing that the statute by its natural operation was "one of prohibition, not regulation" (p. 593), held

> "The bill alleges 'that the employment business consists in securing places for persons desiring to work' and unless permitted to collect fees from those asking assistance to such end the business conducted by appellants cannot succeed and must be abandoned. *We think this conclusion is obviously true.*" (p. 592.)

And at page 594:

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. *Skillfully directed agitation might also*

bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

The dissent in that case was based upon the existence of a paramount social necessity, a factor conspicuously absent in the present case.

It may be here said with even greater truth than in the *Adams* case, that unless the Chinese merchants are permitted to use their native tongue in keeping their books of account, "their business cannot succeed and must be abandoned." Against an invasion of liberty inevitably conducive to so disastrous a result, it surely cannot be sufficient to set up the mere convenience of the government in collecting taxes.

Fundamental rights are not to be disregarded, even for the convenience of revenue officials.

Southwestern Oil Co. v. *Texas*, 217 U. S. 114.

Moreover, it is not proved here that governmental convenience will be materially promoted by the legislation in question.

In *Coppage* v. *Kansas*, 236 U. S. 1, this Court again halted an attempted restriction upon the liberty of pursuing legitimate callings.

Appellant was sentenced to pay a fine with the alternative of imprisonment for violation of an act declaring it unlawful

> "for any individual or member of any firm or any agent, officer or employee of any company or corporation, to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such per-

> son or persons securing employment, or continuing in the employment of such individual, firm, or corporation" (p. 6).

Appellant, superintendent of a railroad company, had requested a switchman to sign an agreement to withdraw from a labor union, and at the same time informing him that if he did not sign he could not remain in the employ of the company. The switchman refused to sign and was discharged.

The Court upon these facts reversed the judgment of conviction on the ground that the Act was not a proper exercise of the police power.

> "The mere restriction of liberty or of property rights cannot of itself be denominated 'public welfare', and treated as a legitimate object of the police power; for such restriction is the very thing that is inhibited by the Amendment" (p. 19).

Burns Baking Co. v. *Bryan*, 264 U. S. 504, is a recent application of the principle that

> "determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts." (*Meyer* v. *Nebraska*, *supra*, p. 400.)

In the *Burns* case a Nebraska law prescribed the minimum and maximum weights of loaves of bread to be made or offered for sale in the State. The evidence demonstrated that it was impossible to manufacture good bread in the regular way without frequently exceeding the prescribed maximum weights.

In holding the statute void as imposing restrictions essentially unreasonable and arbitrary in that the provision fixing maximum weights is not calculated to

effect the purpose of protecting purchasers from fraud, the Court declared:

p. 513:

> "But a State may not, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them. * * * Constitutional protection having been invoked, it is the duty of the court to determine whether the challenged provision has reasonable relation to the protection of purchasers of bread against fraud by short weights and really tends to accomplish the purpose for which it was enacted."

Other cases wherein the courts have refused to sustain similarly objectionable state statutes are:

Penn. Coal Co. v. *Mahon,* 260 U. S. 393.
Truax v. *Corrigan,* 257 U. S. 312.
Buchanan v. *Warley,* 245 U. S. 60.
Home Tel. & Tel. Co. v. *City of Los Angeles,* 227 U. S. 278.
In re Lee Sing, 43 Fed. 359.
In re Jacobs, 98 N. Y. 98.

Even though the Philippine Act did not, as it obviously does, discriminate directly against the Chinese, nevertheless "the purpose of an act must be found in its natural operation and effect." (*Truax* v. *Raich, supra,* at p. 40). In *Yick Wo* v. *Hopkins,* 118 U. S. 356, this Court pierced the veil of ordinances couched in the most general terms and not expressly discriminatory, and ascertained that the ordinances were in their administration

> "*directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by*

> *the public authorities charged with their administration, and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States"* (p. 373).

This Court in the *Coppage* case, *supra,* at p. 15, affirmed its duty to examine *de novo* questions under the Constitution regardless of form or state court construction.

> *"But, when a party appeals to this Court for the protection of rights secured to him by the Federal Constitution, the decision is not to depend upon the form of the State law, nor even upon its declared purpose but rather upon its operation and effect as applied and enforced by the State; and upon these matters this Court cannot, in the proper performance of its duty, yield its judgment to that of the State Court."*

The Court in this as in other cases examined all the facts and circumstances surrounding the controverted legislation to determine if it had any reasonable relation to the public health, safety, morals or general welfare. If there be no such relation, as there is not in the instant case, then the legislation is not a proper or reasonable exercise of the police power.

In *Mugler* v. *Kansas,* 123 U. S. 623, 661, Harlan, *J.,* said:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted

> to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Other decisions where this Court has looked back of the form of statutes to find illegal classifications are:

> *Henderson* v. *Mayor,* 92 U. S. 259.
> *Bailey* v. *Alabama,* 219 U. S. 219.
> *Guinn* v. *U. S.,* 238 U. S. 347.
> *Penn. Coal Co.* v. *Mahon, supra.*

Surely the Philippine statute, whether or not impartial on its face, must by its natural operation make "unjust and illegal discrimination between persons in similar circumstances, material to their rights * * *." This result seems inevitable when one considers that of the 85,000 merchants in the Philippines, only the Chinese will be affected by operation of the law. In its administration the public authorities cannot but apply it "exclusively against a particular class of persons."

In *Penn. Coal Co.* v. *Mahon, supra,* this Court held void a statute prohibiting mining where there was danger of causing the subsidence of human habitations, in a case where the operation of the statute would impair contract rights.

In *Buchanan* v. *Warley, supra,* this Court held void a city ordinance forbidding colored persons to occupy houses in blocks where the greater number of houses were occupied by whites, and *vice versa.*

In *Guinn & Beal* v. *U. S., supra,* this Court declared the unconstitutionality of the so-called Grandfather Clause of the Oklahoma Constitution. This case is another application of the doctrine that the court will not

be concluded by the mere form of a state statute or constitution but will consider its necessary operation and effect in determining its validity under the Federal Constitution.

Bailey v. *Alabama, supra,* stands also for the proposition that the court will go back of the form and express language of a statute. There a statute was held void which provided that where an employee having been advanced wages quit before the end of the term without just cause, he was *prima facie* guilty of intent to defraud.

> "Without imputing any actual motive to oppress we must consider the natural operation of the statute here in question * * *" (p. 244).

In re Sing, supra, involved an ordinance of the City of San Francisco which required all Chinese inhabitants to remove from a specified area to another specified area within the city. The Circuit Court for the Northern District of California held the ordinance void as discriminating and unequal in its operation, and as an arbitrary confiscation of property without due process of law.

In *Quong Wing* v. *Kirkendall,* 223 U. S. 59, the Court considered a Montana statute requiring payment of a license fee by all persons engaged in the laundry business other than the steam laundry business, with a proviso that it should not apply to women so engaged where not more than two women were employed. In upholding the classification, however, Mr. Justice Holmes speaking for the Court remarked at p. 63:

> "*Another difficulty suggested by the statute is that it is impossible not to ask whether it is not aimed at the Chinese; which would be a discrimination that the Constitution does not allow. Yick Wo* v. *Hopkins,* 118 U. S. 356. It is a matter of common observation that hand laundry work is

> a widespread occupation of Chinamen in this country while on the other hand it is so rare to see men of our race engaged in it that many of us would be unable to say that they ever had observed a case. But this ground of objection was not urged and rather was disclaimed when it was mentioned from the Bench at the argument. It may or may not be that if the facts were called to our attention in a proper way the objection would prove to be real. * * * Therefore without prejudice to the question that we have suggested, when it shall be raised, we must conclude that so far as the present case is concerned the judgment must be affirmed."

The designation of Act No. 2972 as the *Chinese* Accounting or Bookkeeping Law, adopted quite naturally and unconsciously by the Collector of Internal Revenue, the Philippine Supreme Court, and the world at large, demonstrates conclusively the discriminatory object and effect of the law.

It is clear beyond cavil that the Act is aimed at the Chinese and is, therefore, "a discrimination that the Constitution and Act of Congress do not allow." It is established beyond peradventure of doubt that the burden of the statute will fall exclusively upon the Chinese.

This natural effect, embodying as it does the only real purpose of the law, was immediately recognized and condemned by all classes of the Philippine and American community, and we are, therefore, led to inquire of this law as Mr. Chief Justice Taft did of the law in the *Child Labor Tax Case*, 259 U. S. 20, at 37,

> "Its * * * effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?"

All can readily see and understand that this Chinese Bookkeeping Law bears no relation whatever to any

legitimate and paramount social necessity, but that its object, the destruction of the Chinese merchants of the Philippines, is entirely beyond the competency of the governing power of those Islands, being directed against the very rights which it is the function of our Constitution and the Philippine Bill of Rights to preserve.

Any restraint upon the right to exercise any lawful calling must be justified, if at all, by some paramount social necessity to which the restraint bears some reasonable relation. The destruction, however, of all right in an important class of the community to earn a livlihood has never been and cannot be sustained.

II.

The Act is also void because it denies to petitioners and others similarly situated the rights, privileges and immunities secured to them by the treaties between the United States and China, which assure to Chinese nationals "most favored nation" treatment.

> "The rights of the petitioners, as affected by the proceedings of which they complain, are not less, because they are aliens and subjects of the Emperor of China. *By the third article of the treaty between this government and that of China, concluded November* 17, 1880, 22 *Stat.* 827, *it is stipulated*: '*If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its powers, to devise measures for their protection, and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty.*"

> "The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or nationality; *and the equal protection of the laws is a pledge of the protection of equal laws*" (Matthews, *J.*, in *Yick Wo* v. *Hopkins*, *supra*, p. 369).

The "*prevention of invidious discriminations*" regarding persons and property, which operate against the Chinese and not against the citizens and subjects of more favored nations, must certainly be within the protection afforded by a treaty provision of so fundamental a purpose. *Fulco* v. *Schuylkill Stone Co.*, 169 Fed. 98, 100.

British and Spanish residents of the Philippines are permitted by this law to keep their books of account in their native language.

In view of the Treaties, how can this discrimination against the Chinese be justified?

III.

This Court may determine the validity of the Act untrammeled by the construction thereof adopted by the Philippine Supreme Court. That construction is clearly erroneous and wholly at variance with the plain import and language of the Act.

This Court is authorized to review the decision of the Supreme Court of the Philippine Islands, and may entirely disregard the construction placed upon the Act by that Court.

Mr. Justice Brandeis, delivering the opinion of the Court in *Philippine Sugar, etc. Co.* v. *Philippine Islands*, 247 U. S. 385, 390, declared:

> "This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. *Phoenix Ry. Co.* v. *Landis*, 231 U. S. 578. *But that disposition may not be yielded to, where the lower court has clearly erred. Carrington* v. *U. S.*, 208 U. S. 1. Here, the construction adopted was rested upon a clearly erroneous assumption as to an established rule of equity. The Supreme Court erred in refusing to consider the evidence of mutual mistake; and its judgment must be reversed."

In *Yick Wo* v. *Hopkins*, *supra*, at p. 366, the court declared that it was —

> "constrained, at the outset, to differ from the Supreme Court of California upon the real meaning of the ordinances in question."

In *Scott* v. *McNeal*, 154 U. S. 34, at 45, its power and duty are clearly stated by this Court:

> "Upon a writ of error to review the judgment of the highest court of a state upon the ground that the judgment was against a right claimed under the Constitution of the United States, *this court is no more bound by that court's construction of a statute of the Territory, or of the State, when the question is* whether the Statute provided for the notice required to constitute due process of law, than when the question is whether the statute create a contract which has been impaired by a subsequent law of the state, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the court of another State. *In every such case, this court must decide for itself the true construction of the*

statute. Huntington v. *Attrill*, 146 U. S. 657, 683, 684; *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486, 492-495."

The majority opinion of the Philippine Supreme Court conceded that if the plain language of the Act meant what it said, then it would probably be unconstitutional:—

> "*A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional*" (R., p. 1197).

But in order to save the Act—and the face of the legislature—the court struggled to devise a construction that would bring the Act within the pale. In pursuit of this purpose, the court was able to conjure up an occult constitutional legislative intent, very different from the plain language of the sweeping prohibition set forth in the Act.

> "Act No. 2972 is a fiscal measure. It should be so construed if possible as to effectuate legislative intent, as collected from the occasion for the law, the circumstances, under which it was enacted, the mischief to be remedied, and the policy which dictated its passage. *It should be so construed if possible as to avoid conflict with the Constitution, although such construction may not be the most obvious or natural one.* Giving, therefore, to the law a meaning which will carry out the main governmental purpose and which will permit us to sanction its constitutionality, it seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in books of account or forms subject to inspection for taxation purposes in any other

> language than either English, Spanish or a local dialect, although permitting all merchants to execute their commercial transactions or operations in any language or dialect they may prefer, and although permitting them to keep such other books of account as their personal convenience may dictate and in a language which will come most easily to them * * *" (R., p. 1199).
>
> * * * * * *
>
> "We construe Act No. 2972 as meaning that any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, *shall keep its account books, consisting of sales books and other records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue, in effect when this action was begun*, in English, Spanish or a local dialect" (R., p. 1201).

That the law was not intended as a *fiscal* measure is clearly recognized by the Collector of Internal Revenue himself who has testified herein:—

> "* * * we are dealing with the Chinese Accounting Law, which is a general law. *It does not belong to the Bureau of Internal Revenue.*"

Thus, in straining after a constitutional construction of a palpably invalid law, the court enacted a new law.

We are, of course, aware of the salutary rule that where it is fairly possible to do so without doing violence to the terms thereof, the courts should so construe a statute as to be able to uphold it.

> *United States* v. *Jin Fuey Moy*, 241 U. S. 401.
> *The Abby Dodge*, 223 U. S. 166.
> *El Paso & N. E. Ry.* v. *Gutierrez*, 215 U. S. 87.

This rule does not, however,

> "intend the court to dissect an unconstitutional measure and reframe a valid one out of it by inserting limitations it does not contain. This is legislative work beyond the power and function of the court."
>
> *Hill* v. *Wallace*, 259 U. S. 44, 70.

This Act is couched in the simplest and most direct terms conceivable to state its purpose that no account books shall be kept in other than the prescribed languages.

The legislative debates upon this law demonstrate clearly that the keeping of *all* account books was intended to be prohibited, although the law itself fails entirely to define "books of account."

As was said by this Court in *St. Louis & Iron Mountain Ry. Co.* v. *Taylor*, 210 U. S. 281, 294:

> *"We have nothing to do but to ascertain and declare the meaning of a few simple words in which the duty is described.* It is enacted that 'no cars either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard.' *There is no escape from the meaning of these words. Explanation cannot clarify them, and ought not to be employed to confuse them or lessen their significance."*

The limitation attempted to be injected into this law by the Philippine Supreme Court, restricting its operation to indefinite and unnamed books for "taxation" purposes, so clearly violates the intention of the "few simple words" of the Act as to require little comment.

If tax books and returns were all that were contemplated by this law the legislature must be deemed to have indulged in a meaningless act of surplusage, for it is conceded that the Chinese as well as all of the Philippine merchants have been at all times submitting

the required tax forms and blanks in the prescribed languages.

Furthermore, would it not have been the simplest matter for the Philippine legislature, had it intended to so limit its prohibition, which it obviously did not, to express the limitation in adequate language?

> *United States* v. *First National Bank*, 234 U. S., 245, 248.

It is clear beyond shadow of doubt, from the title and the simple terms of this Act, that no account books, not even a duplicate set, may be kept in the Chinese language.

It would be difficult to find a more perfect illustration of "spurious interpretation" than that here employed by the Philippine Court.

> "The object of genuine interpretation is to discover the rule which the law-maker intended to establish; to discover the intention with which the law-maker made the rule, or the sense which he attached to the words wherein the rule is expressed."
>
> * * * * *
>
> "On the other hand, the object of spurious interpretation is to make, unmake, or remake, and not merely to discover. It puts a meaning into the text as a juggler puts coins, or what not, into a dummy's hair, to be pulled forth presently with an air of discovery."
>
> SPURIOUS INTERPRETATION, by *Roscoe Pound*, 7 Col. Law Rev. 379, 381, 382.

Even though this Act could in any manner be reconstructed, from a plain prohibition against the keeping of any account books in other than the prescribed languages, into the new Act created by the Philippine Supreme Court, prescribing a limited number of un-

ascertained books to be kept in certain languages, such judicial legislation could not save it.

The Philippine Supreme Court in its opinion recognizes that

> "It has not escaped our notice that the law does not specify what books shall be kept" (R., p. 1198).

We search in vain to find in the Act any requirement that any account books of any sort be kept. The Act is silent on that point. Nor do we find in the legislation of the Philippine Supreme Court any sufficiently definite provision as to what books shall be kept. The inevitable result must be chaos.

How is the infortunate merchant to know which of his books of account, either under the law as written or under the lower court's construction thereof, are to be kept in the designated languages, and which may be kept in the language which he can read and understand?

Certainly a penal law must be definite if nothing else.

In *Small Co.* v. *American Sugar Refining Co.*, 267 U. S. 233, 238, this necessity is thus stated:

> "Section 4 provided it should be 'unlawful for any person wilfully * * * to make any unjust or unreasonable * * * charge in * * * dealing in or with any necessaries,' or to agree with another 'to exact excessive prices for any necessaries.' In a series of cases, of which *United States* v. *Cohen Grocery Company*, 255 U. S. 81, and *Weeds, Inc.* v. *United States*, 255 U. S. 109, are examples, this court held that provision invalid as contravening the due process of law clause of the Fifth Amendment, among others, *because it required that the transactions named should conform to a rule or standard which was so vague and indefinite that no one could know what it was.*"

The Philippine Supreme Court, having clearly recognized the total indefiniteness of the law in its failure to

define "books of account," should, under its plain duty, have held the law unconstitutional for that reason. In its attempt to evade this necessity that Court was entirely unsuccessful, because the same fatal objection exists against the new law which the Court attempted to enact.

The admirable opinions of Justices Street and Johns of the Philippine Supreme Court, in their vigorous dissent herein, so thoroughly demonstrate the unconstitutionality of this Act that they could very well serve, without more, as the brief on behalf of petitioners herein. The impossible situation created by the construction of the law adopted by the majority of the Philippine Court, is thus stated by Mr. Justice Johns:—

> "The majority opinion holds that the law should be construed to read that account books, for taxation purposes only, shall be kept in either English, Spanish or any local dialect. With all due respect to the majority opinion, *that is the very highest type of judicial legislation.* If the act is to be so construed, then the law itself should specify and define what books are required to be kept for taxation purposes, and how they should be kept, or it should delegate that power to the tax officials.
>
> Assuming, as the majority opinion does, that Act 2972 should read that account books, for taxation purposes, should be kept in either English, Spanish or any local dialect, *the act does not specify or define what books shall be kept or how and in what manner they shall be kept.* Neither does it delegate that power to anyone else. *In its effort in trying to get out of one hole and make a void law a valid law, the majority opinion runs into another hole, which is equally fatal to the law"* (R., p. 1214).

Finally, even if this legislation is not unconstitutional as written, for failing adequately to express its subject in its title, as required by Sec. 3 of the Philippine Au-

tonomy Act, it is assuredly rendered so by the Court's imposition upon the law of an assumed "revenue" purpose clearly not embodied in its title.

The lower court's construction creates the situation contemplated by this Court in the *Employers Liability Cases*, 207 U. S. 463, at 500, wherein it said:

> "To write into the act the qualifying words, therefore, would be but adding to its provisions in order to save it in one aspect, and thereby to destroy it in another; that is, to destroy in order to save and to save in order to destroy."

There can be no doubt that the decision of the Philippine Supreme Court is the boldest sort of judicial legislation and is legally unjustifiable, however much we may sympathise with its struggle to avoid the horns of the dilemma by attempting to placate both legislature and victims. It has the added vice of rendering the law even more fatally indefinite.

It is interesting to note the attitude of the Philippine Court when confronted by a regulation of the Collector of Internal Revenue identical in substance with the Act as reconstructed in this case. In *Young* v. *Rafferty*, 33 Phil. Reports 556, decided prior to enactment of Act No. 2972, the Supreme Court of the Philippines had before it a regulation of the Collector requiring all merchants to keep a daily sales book in English or Spanish. It was held that in thus prescribing certain languages the Collector had exceeded his authority to make necessary regulations not inconsistent with law, to carry out the Revenue Act. In reaching this conclusion, the Court stated at p. 559:

> "We apprehend that no one will deny that sales could be recorded in a bound volume such as is specified using the tabulated form desired

> by the Collector, in any modern language. In other words all the information could be recorded in the designated book in the required form in Chinese or in a local dialect or in some other language as accurately as it could be recorded in English or Spanish."

Again at p. 560,

> "But, however this may be, the figures discussed show that the regulation does affect a large and important class of business men not only Chinese, *but Filipinos as well although it may be that the burden falls most heavily upon the Chinese.* To require this number of business men to engage someone familiar with English or Spanish to keep a record for them which will comply with the regulation would in many instances impose a greater burden upon them than the entire amount of taxes which they have to pay."

It is significant that Filipinos as well as Chinese were affected by the disputed regulation. Moreover, the Philippine Supreme Court then saw no grave necessity for such an invasion of personal liberty, nor did the Court hesitate to recognize the injustice of imposing such requirements upon the Chinese merchants.

No construction can conceal the fact that this law is a blow aimed to drive out the Chinese merchant. That purpose cannot be effected in that fashion in the teeth of the Constitution, the Act of Congress and the Treaty. The Act is hence invalid and must yield.

CONCLUSION.

The decree of the lower Court should be reversed and a writ of prohibition directed to issue against respondents restraining them and each of them from enforcement of Act No. 2972, with such other and further relief as may seem just and proper.

Respectfully submitted, this 15th day of March, 1926.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
MAHLON B. DOING,
Counsel for Petitioners.

Office Supreme Court
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 623.

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

against

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA, as Fiscal for the City of Manila and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila,

Respondents.

BRIEF OF PETITIONERS IN REPLY.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
MAHLON B. DOING,
Counsel for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected, Petitioners, vs. W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA, as Fiscal for the City of Manila and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents.	No. 623.

BRIEF OF PETITIONERS IN REPLY.

The respondents' arguments herein, as gathered from their brief, indicate that respondents have now definitely abandoned any serious attempt to justify Act 2972 as written and now rely wholly upon the construction of the Act adopted by the Philippine Court.

Respondents' argument upon the purpose and operation of the law is addressed to that law "as limited by the Supreme Court of the Philippine Islands," "to cure

constitutional difficulties'' (Resp. Brief, pp. 27, 32, 21).

They also insist that this Court in reviewing the decision of the Philippine Supreme Court is bound by the latter court's finding as to the purpose of the law, upon the principle that the lower court's findings, unless entirely without support, are accepted. *De La Rama* v. *De La Rama*, 201 U. S. 303.

If this be so, then would this Court be bound by the other finding of the Philippine Supreme Court, that as literally construed this law is *in fact* so arbitrary, unreasonable and confiscatory in operation upon the Chinese merchants, as to render it unconstitutional (R., p. 1197). If this court should deem itself bound by the lower court's finding as to the *purpose* of the law, it must by parity of reasoning accept that court's finding as to the *operation* of the law as literally construed.

The willingness of respondents to follow the Philippine Court in abandoning the claim of constitutionality for the law as written, has the effect of simplifying the reply to their argument.

We consequently, address ourselves briefly to certain salient points of respondents' brief.

I.

This Court is in No Degree Bound by the Construction Placed by the Court Below Upon Act 2972.

Respondents' position as to the controlling effect of the Philippine Court's construction of the law in question, is based upon a misconception and misapplication of the principles governing the review by this Court of the decisions of *state* tribunals.

Upon appeals from state courts, this Court being confined in its review to the federal question involved, is bound by the statutory construction of the state court, if such construction renders the law constitutional and

thus removes from the case any reviewable question. *Cincinnati Railway Co.* v. *Kentucky,* 252 U. S. 408; *Londoner* v. *Denver,* 210 U. S. 373.

However, the foregoing principles have not the slightest application to a review by this Court of a decision of the Philippine Supreme Court.

The review of a Philippine decision here, is exactly the same review as that given upon the decision of an intermediate appellate *federal* court. *De La Rama* v. *De La Rama, supra,* at page 309.

Upon such a review the whole case is before this Court and its duty is to render the judgment upon the whole case which the lower court should have rendered upon the record before it. *Camp* v. *Gress,* 250 U. S. 308, 318; *Baker* v. *Warner,* 231 U. S. 588, 593.

This court in reviewing a federal decision is never bound by the lower court's construction, even as regards a *state* statute. *Central Land Co.* v. *Laidley,* 159 U. S. 103, at 111, and cases cited.

Finally, in every case involving a statute of a territory or possession, this Court is not only not bound by the lower court's construction but it

"cannot refuse to exercise its own judgment,"

Copper Queen Mining Co. v. *Arizona,* 206 U. S. 474 at 479, and cases cited.

II.

Respondents' Treaty Argument.

Respondents' argument with regard to the Treaty with China of 1880 overlooks entirely the provisions of Article II thereof, which operates concurrently with Article VI of the Treaty of 1868. The effect of these Treaties to protect the Chinese in the territories of the United States at the present day, has been recently

recognized in the decision in *Poon* v. *Miller*, 234 S. W. (Texas) 573, (1919); see also *Lau Ow Bew, Petitioner*, 141 U. S. 583, 587; and CRANDALL, TREATIES, THEIR MAKING AND ENFORCEMENT, 2nd Ed., p. 417, and decisions there collated.

III.

Respondents' Treatment of the Facts in Attempting to Justify the Law as One of Over-Riding Social Necessity is Not Consistent and is Not Sustained by the Record.

(a).

The burden of respondents' argument to establish some colorable necessity for any law upon the subject of the keeping of books by the Chinese, is that the Chinese have been guilty of gross frauds upon the revenue and that the Revenue Officials have been at the mercy of the Chinese in this regard by reason of an alleged inability to examine their books.

Their attempt to establish these facts is confined to the testimony of the Internal Revenue Officials and particularly to the testimony of one Posadas, the Acting Collector of Internal Revenue.

We do not desire to enter into detailed controversy as to the effect and credibility of such testimony. We assert, however, that a reference to the record will demonstrate to this Court the equivocal, inconsistent and prejudiced nature of such evidence.

Respondents attempt to make capital of *the excluded* Exhibits "X" and "X-1" in this respect, and charge petitioners with bad faith in securing the exclusion of these exhibits from the evidence.

We are constrained to briefly call attention to the true history of those exhibits.

Petitioners' estimate, that the Chinese merchants of the Philippines do 60% of the mercantile business, was based upon the fact, established by the record in the case of *Young* v. *Rafferty*, 33 Phil. Rep., 556, that the Chinese merchants paid 60% of the taxes. *This fact had been established in the latter case by the records of the Bureau of Internal Revenue* (R., p. 1128).

Shortly after the beginning of the present litigation, counsel for the petitioners addressed a letter to the present Collector of Internal Revenue in which they requested statistics showing the percentage of taxes paid by the Chinese merchants during the years covered by exhibits "X" and "X-1" (R., p. 949).

On June 29, 1923, Mr. Posadas answered that inquiry with the laconic information—"no statistics kept" (R., p. 952).

During the whole course of this litigation petitioners' counsel attempted to obtain from the Bureau of Internal Revenue the statistics requested, but were constantly met with subterfuge and delay until it became apparent that the Bureau was unwilling or unable to produce the statistics for examination and *cross-examination* upon the trial.

On the day after petitioners had closed their proofs in the case and when there could be no cross-examination, the respondents attempted to introduce the exhibits in question in evidence (R., pp. 1122 *et seq.*).

On February 15, 1924, the Philippine Supreme Court, after having fully heard the views of both sides with reference to these exhibits, very naturally excluded them from evidence (R., p. 1141).

These exhibits in and of themselves prove nothing of importance. If, during the years mentioned therein the Chinese were paying the percentage of taxes as therein alleged, then it can only be that petitioners' calculation that the Chinese do 60% of the mercantile business of the Islands, based as it was upon the percentage of taxes

paid, is erroneous, and that the Chinese in the Islands do only that percentage of business which is represented by the percentage of taxes which they pay.

As opposed to the pretended effect of these exhibits and the exaggerated general estimates of Mr. Posadas that *several millions* are lost annually to the Treasury in Chinese taxes, is the specific evidence upon the question which his Bureau placed in the Record (R., pp. 1070, 940, 941).

Mr. Posadas himself has testified that upon an examination of 477 Chinese establishments, being *all* of those suspected, under-declarations amounting to P. 600,000 were found, which amounted in a difference of taxes of not exceeding P. 9,000 (R., pp. 698, 941).

This important admission conclusively eliminates two of the fundamental contentions upon which respondents' entire structure of legislative purpose and necessity is founded, because it demonstrates that:

First, all suspected under-declarations by the Chinese were discoverable by the use of Chinese accountants without the necessity for Act 2972, and *Second,* even upon the violent assumption that an examination of the books of all Chinese establishments would disclose under-declarations in the same proportion as did the suspected cases, *the taxes which the Government was temporarily losing but which it would obtain in due course and without any necessity for the Bookkeeping Law, would not exceed P. 200,000 per annum.*

Much is said by respondents as to the legislative purpose in passing Act 2972, to which we need only respond in the words of the quotation from Mr. Justice Field, which respondents have omitted from their reference to the decision, in *Soon Hing* v. *Crowley,* 113 U. S. 703 at 710.

> "The motives of the legislators, considered as the purposes they had in view, will always be

presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments."

(b).

Respondents' brief would have us believe that the evidence justifies the conclusion that there are practically no Chinese merchants in the Philippine Islands unable to keep their books of account in either English, Spanish, or a local dialect, and that there has been a failure of proof upon behalf of petitioners in this respect.

As opposed to this present position of respondents, it is interesting to notice the following concessions found in the brief of Mr. Guevara, Prosecuting Attorney for the City of Manila, submitted in opposition to the petition for certiorari herein:

> "It is a proven fact that out of 12,000 Chinese merchants in the Philippines only some 4,000 are unable to keep their books of account in either English, Spanish, or native dialect" (Brief, p. 9).
>
> "And requiring a Chinese merchant to keep his books of account in a language unknown to him might force him to abandon his business" (Brief, p. 29).

It may, therefore, be seen that up to the present the respondents have never contended, as they now apparently do for the first time, that the Bookkeeping Law would not operate as an extreme hardship upon at least a substantial portion of the Chinese community.

Respondents' claim as to petitioners' failure of proof with regard to the hardship involved in the operation of this law, is interesting. It would appear that the only testimony which they would consider satisfactory in this regard, would be the unanimous individual testimony of each of the 12,000 Chinese merchants in the

Philippine Islands. The Court will scarce sanction so extreme a demand.

It is conceded that there was and is some slight conflict of evidence with regard to these questions. It is submitted however, that when consideration is given to the nature, number and character of petitioners' witnesses as opposed to those of respondents', there can be no doubt as to where the overwhelming weight of the evidence lies.

If there remains any doubt in this regard, however, it would seem to be clearly disposed of by an application of the principle thus stated in *Muller* v. *Oregon*, 208 U. S. 412, 420:

> "At the same time, when a question of fact is debated and debateable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge."

The widespread condemnation of Act 2972 for its necessarily disastrous operation and effect upon the Chinese, voiced by the various Chambers of Commerce, by the War Department, by Congressmen and Congressional Committees and by non-Chinese business houses, added to the direct testimony of such witnesses as the Hon. William T. Nolting, Mr. H. B. Pond and the late Dr. Pardo de Tavera, can leave little room for substantial controversy.

IV.

The Construction Placed by the Philippine Supreme Court upon Act 2972 is Absolutely Indefensible Because Making a New and Quite Dissimilar Statute. No Better Illustration of Spurious Interpretation Can be Found in the Books.

We need not repeat any part of what was said in our main brief upon the obvious character of the lower court's construction as one of ultra judicial legislation as well as one leaving the statute still too vague for enforcement.

We desire, however, to call attention to the respondents' admission in the brief of Mr. Guevara, that the law as written is "*apparently unambiguous*" (p. 43). This admission is literally true, for the lack of any ambiguity in the law is apparent.

Respondents ask that the provisions of Article 33 of the Philippine Code of Commerce, which prescribes what books of account shall be kept by merchants, be read in connection with the Bookkeeping Law. To this we readily assent.

The Code of Commerce provides exactly what books are to be kept by a merchant. If this definition is to be read into Act 2972, then the decision below erroneously fixed as the criterion the Internal Revenue regulations in effect at the beginning of the action requiring different books. This claim as to the applicability of the Code of Commerce is plausible, but respondents have overlooked the fact that it completely negatives their own argument as to the validity of the decision of the Supreme Court.

To respondents' suggestion that Act 2972 should be construed with a view to the Spanish law of the Philippines, it is sufficient to mention the fundamental

principle stated by Mr. Justice Holmes, that the Spanish Law of our possessions—

> "has to bend to the expressed will of the United States."
>
> *Diaz* v. *Gonzales*, 261 U. S. 102, 106.

Neither can the fact that somewhat similar laws are in operation in certain foreign jurisdictions under widely dissimilar conditions have any possible relevancy, for the reason that in none of those jurisdictions is the law-making power restricted by constitutional limitations.

> "But we have to remember that the law-making power of Spain was not restricted in the way familiar to us."
>
> *Cordova* v. *Folgueras*, 227 U. S. 375 at 379.

Respondents' effort to justify the legislation of the Philippine Supreme Court as having rendered the law definite and certain in its requirements, calls for some comment.

It will be noticed that the construction of the Philippine Court makes the law read that there shall be kept in the prescribed languages the books

> "required for taxation purposes by Regulations of the Bureau of Internal Revenue, *in effect when this action was begun*" (R., p. 1202).

The impossibility of this construction was distinctly called to the Supreme Court's attention by counsel for petitioners in an attempt to obtain a re-hearing.

If the Regulations to be looked to for the books covered by this law are those in effect "when this action was begun," what was the meaning of the law during the period of some two years between the time

of its passage and the date of the commencement of this action? Did the law have any meaning during that period and was it necessary that any books should be then kept?

It will be noticed that the construction of the Court delegates no authority to the Bureau of Internal Revenue to affect the law by a change of their Regulations. The Court apparently shrank from delegating such an authority in the complete absence of a word in the Statute to justify it. Why it "froze" into Act 2972 the specific regulations in force when this action began, we do not know.

Suppose that at some future time the Bureau of Internal Revenue changes its Regulations so that different books are required to be kept than those which were required at the time of the commencement of this action. Which set of books, under the lower court's construction, is the Chinaman to keep in the specified languages? Did the judicially created power of delegated legislation die with the action, or does it go rolling on through time?

The foregoing merely serves in our judgment, to demonstrate that the lower court's construction of Act 2972 is lame, impossible, ridiculous. Under it, for a period of two years between the time when this law was passed and this action was begun, the law was a dead letter, as it may be again when the Bureau of Internal Revenue determines to change its regulations respecting the keeping of books. Can one be convicted of crime in such a situation?

Respondents say that the lower court's construction has "cured" the constitutional uncertainties in the law, and that it contains a "virtual promise" that there will be no discrimination against the Chinese merchants in its enforcement.

A judicial decision which attempts to "cure" unconstitutionality and to make "virtual promises" that minorities shall receive fair treatment is not that kind of judicial power or function contemplated by the Constitution or by Anglo-American institutions. The law is upon its face unconstitutional. The Philippine legislature cannot within the orbit of its power penalize the mere keeping of books in the Chinese language. The Philippine Supreme Court cannot "cure" the defect by abrogating the negative portion of the statute and substituting a direction to keep certain books under the regulations prescribed by a department of the Government to which the statute makes no reference.

The decision of the lower court must therefore be reversed and the law as it stands held to be beyond the power of the legislature.

Respectfully submitted, this 10th day of April, 1926.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
MAHLON B. DOING,
Counsel for Petitioners.

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Supreme Court of the United States

OCTOBER TERM—1925.

No. 623.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,
Petitioners,

vs.

W. TRINIDAD, as Collector of Internal Revenue and others,
Respondents.

Suggestion.

Now comes his Excellency Sao-Ke Alfred Sze, Chinese Minister to the United States of America, by Charles A. Conlon Esq., his Counsel, and respectfully suggests and represents to the Court that the Chinese Government is materially interested in the questions involved in the above entitled cause; that such questions affect all the Chinese merchants in the Philippine Islands, who are about 12,000 in number and do at least 60% of the total business done by all the mer-

chants in said Islands; that such questions include the construction, application and effect of existing treaties between the United States and China, and particularly Article VI of the Treaty of July 28, 1868, and Articles II and III of the Treaty of November 17, 1880; and that it is of great importance to the Chinese Government that such questions should be determined by this Court.

WHEREFORE it is respectfully prayed that this suggestion be received and that this Honorable Court give favorable consideration to the petition for a Writ of Certiorari herein.

Respectfully submitted this 5th day of October, 1925.

CHARLES A. CONLON,
Counsel for his Excellency,
Sao-Ke Alfred Sze.
Chinese Minister to the United
States of America.

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Supreme Court of the United States

OCTOBER TERM—1925

NO. 623

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected, Petitioners

VERSUS

W. TRINIDAD, as Collector of Internal Revenue; EULOGIO P. REVILLA, as Fiscal for the City of Manila; and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents

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BRIEF FOR THE RESPONDENTS IN THE MATTER OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS, WITH MOTION TO ADMIT SAID BRIEF

FREDERIC R. COUDERT, ALLISON D. GIBBS, and FREDERIC R. COUDERT, JR., Counsels for Petitioners, 2 Rector Street, New York City

GUILLERMO B. GUEVARA, Prosecuting Attorney for the City of Manila, Counsel for the Respondents, 53 General Luna, Manila, Philippine Islands

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In the Supreme Court of the United States

OCTOBER TERM—1925

YU CONG ENG and CO LIAM, for themselves and for the benefit of all other persons similarly situated and affected, Petitioners

VERSUS

W. TRINIDAD, as Collector of Internal Revenue; EULOGIO P. REVILLA, as Fiscal for the City of Manila; and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents

[Certiorari to the Supreme Court of the Philippine Islands]

MOTION FOR LEAVE TO FILE MEMORANDUM FOR RESPONDENTS

Now comes the undersigned, in behalf of the respondents in the above entitled case, and moves for leave to file the Brief for Respondents hereto attached.

Manila, February 24, 1926.

GUILLERMO B. GUEVARA
Prosecuting Attorney for the City of Manila
Counsel for Respondents

218279

In the Supreme Court of the United States

OCTOBER TERM—1925

No. .....

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected, Petitioners

VERSUS

W. TRINIDAD, as Collector of Internal Revenue; EULOGIO P. REVILLA, as Fiscal for the City of Manila; and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila, Respondents

CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

BRIEF FOR THE RESPONDENTS

FACTS

The following are facts supported by the evidence in this case and so found by the Philippine Supreme Court:

1. That on October 8, 1914, the then Director of the Bureau of Internal Revenue, Mr. James J. Rafferty, issued a circular (Circular Letter No. 467) duly approved by the Secretary of Finance and Justice, wherein, among other things, it was provided:

2. *Records of Merchants and Manufacturers.*—Every merchant and manufacturer subject to the tax imposed by section

14 of Act No. 2339, shall keep a day book, in which he shall enter in detail in English or Spanish every day each of his sales that amount to ₱50 or more, and the daily aggregate amount of sales that are less than ₱50 each. Every merchant and manufacturer shall before using said book serially number its pages in a permanent and legible manner, and shall present it to an internal revenue agent or officer for approval. Cash sales and credit sales shall be entered separately in this book within the period of twenty-four hours following the date on which same are made. If on any date no sales are made, then that fact shall be noted in the book within the said twenty-four hours under the corresponding date. (*Exhibit 31, pp. 1065, 1067, Transcript of Record.*)

2. That the regulation contained in the above circular was designed to protect the Government against evasion of the percentage tax. (*Young* versus *Rafferty, 33 Phil. Rep., 556.*)

3. That the condition complained of by said Collector (i. e. Government losses in the collection of merchants' taxes) which prompted him to issue the aforesaid circular, under the provisions of sections 5 and 6 (*j*) of Act No. 2339, has confronted the Government ever since the present system of internal revenue taxes was inaugurated in 1904. (*Ibid.*)

4. That said circular of the Collector of Internal Revenue was annulled by the Philippine Supreme Court on the ground that "if it was necessary to impose such a burden (to keep sales books in English or Spanish) upon the business community in order that the Government may protect itself from such losses, it was never intended that the initiative should be taken by the Collector of Internal Revenue," and that "it was not for the administrative head of a Government bureau to say that such an obstacle to the collection of taxes shall be removed by imposing burdens not specifically authorized in the law itself"; the court having, however, declared that the question whether public policy required that a law

on the subject should be enacted was for the Legislature itself to determine, without expressing any opinion as to the validity of such a law. (*Ibid.*)

5. That in view of such adverse decision, and of the fact that, besides frequent evasions of the percentage tax, false declarations were being made by many Chinese merchants in their income tax returns, some members of the Legislature presented in different periods bills whose object was to require that merchants' books be kept in English or Spanish. (*Exhibit 31, at p. 1068, Transcript of Record.*)

6. That one of said bills was passed by the Senate during the first period of the Fifth Legislature but was held in abeyance in the House of Representatives, which postponed the consideration thereof in view of its exceptional scope and the large interests to be affected thereby. (*Ibid.*)

7. That in view of such postponement, the then Governor-General, in his message to the Legislature of October 16, 1920, stated, among other things:

> The relation of the Government to private or semi-public business enterprises, either through the police power or the taxing power, requires constant attention and revision. I recommend for your consideration the following provisions to assist in an adequate development of your national business and commercial life and for the proper protection of the public.
>
> * * * * * * *
>
> 5. Legislation as already approved by the Senate should require that all business houses keep their books in English or in Spanish, or in any one of the local Philippine dialects, *in order to avoid wholesale frauds upon the public revenues.* (*Ibid. at pp. 1068, 1069, Transcript of Record.*)

8. That said bill was approved by the Philippine Legislature on February 21, 1921, as Act No. 2972, to take effect November 1, 1921. (*Exhibit 29 at pp. 1060, 1061, Transcript of Record.*)

9. That a few days before November 1, 1921, the date set for the taking effect of the Act, the present Governor-General, Hon. Leonard Wood, addressed a communication to the Legislature, a paragraph of which reads as follows:

> It is evident that the effects of this law (Act No. 2972) might be much more harmful than beneficial to the public interest *if sufficient time were not given for preparation* in the case of merchants and other business men whose transactions are on a relatively small scale, especially to those established at points far distant from the centers of culture or those who, for some weighty reason, may be unable to secure in time the necessary means for complying with the law. (*Exhibit L. at p. 982, Transcrip of Record.*)

10. That in view of such recommendation, the Act was amended by Act No. 2998, providing that it shall take effect on January 1, 1923, or about two years from its approval. "But due to the unavailing efforts of the Secretary of War, the present Governor-General and the Chinese community to have Act No. 2972 repealed, so counsel for the petitioners intimates, its enforcement was suspended until the adjournment of the Legislature in February, 1923." (*Decision of the Philippine Supreme Court, at p. 1160, Transcript of Record.*)

11. That out of the 85,000 merchants of all nationalities in the Philippines to whom Act No. 2972 applies, between 10,000 and 12,000 are Chinese, whose aggregate commercial business represents about sixty per cent of the total business done by all the merchants in the Philippine Islands, and that at least two-thirds of the Chinese businessmen can easily comply with the law. (*Ibid. p. 1170, Transcript of Record, and Young* v. *Rafferty, supra, p. 560.*)

12. That from a canvass made some time prior to June 30, 1923, by supervising agents of the Bureau of Internal Revenue of Chinese merchants keeping dif-

ferent kinds of account books all over the Philippine Islands, there appears that: (*a*) Twenty-six per cent of said Chinese merchants were keeping only the sales books required by said bureau; (*b*) sixty-four per cent were keeping Chinese account books besides Bureau of Internal Revenue books; and (*c*) ten per cent were keeping only Chinese books. (*Exhibit 2, p. 1015, Transcript of Record.*)

13. That the petitioners and the 12,000 or more other Chinese for whose benefit this action has been instituted are now, and for *many years* last past have been, domiciled in the Philippine Islands and engaged in business as merchants in said Islands. (*Amended petition, p. 37; testimony of Collector Posadas, p. 747, Transcript of Record.*)

14. That said Chinese merchants transact business with natives and foreigners in English, Spanish, or local dialects, prepare their contracts, invoices, and general commercial correspondence in English, Spanish, or Chinese, and are practically keeping the sales books required by the Bureau of Internal Revenue. (*Testimony of Yu Cong Eng, Sy Seng Tong, Co Liam, and twenty-nine other Chinese witnesses, pp. 145-498, Transcript of Record.*)

15. That the use of languages other than those mentioned in Act No. 2972 results in heavy losses of Government revenue amounting to several million pesos every year. (*Testimony of Collector Posadas; Exhibit 3, p. 1017; and Exhibit 31 at p. 1070, Transcript of Record.*)

SUMMARY OF ARGUMENT

I

1. A business, by circumstances and its nature, may raise from private to be of public concern and be subject, in consequence, to governmental regulation. (German Alliance Ins. Co. v. Kansas, 233 U. S. 389, 411.)

2. Books of account are the only means the Government has to assess taxes on merchants. Books of account should therefore, be considered as public records. The Government, for the purpose of revenue, is entitled, as of right, to take charge of private business of *any* character, exercise control over it, and regulate the entire business. Thus, speaking of a distillery, the Government has a right to examine its books, and establish either the verity or want of verity of these books; and for governmental purposes *every book which a distiller keeps is to a certain extent a Government book.* (U. S. v. Mason *et al.*, 26 Fed. 1189.)
3. Bookkeeping is affected by a public interest, since it is through the books of accounts that taxation is collected. Such books and the keeping thereof are, therefore, clothed with a public interest and, as such, can lawfully be regulated and interfered with by the Government under its sovereign power. (German Alliance Ins. Co. v. Kansas, *supra;* Clark v. Nash, 198 U. S. 361; Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527; Noble State Bank v. Haskell, 219 U. S. 104; Pierce Oil Corp. v. Hope, 248 U. S. 498; La Tourette v. McMaster, 248 U. S. 465; Block v. Hirsh, 256 U. S. 135; Arts. 33, 34, 35, 36, 37, 49, Code of Commerce of 1888, and explanatory notes thereto by Spanish Minister Sr. Alonso Martinez.)
4. The keeping of books of account in the official language of the Government has, long before the enactment of Act No. 2972 of the Philippine Legislature, been recognized by the Spanish legal tradition as well as by existing legislations of many civilized countries. (Ley 12, tít. 4.°, Lib. IX, Novísima Recopilación; Ley 13, tít. 4.°, Lib. IX, *ibid;* Argentine Code of Commerce, art. 66; Code of Commerce of Bolivia, art. 42; Chile Alcohol Law, art. 32; Columbia Code of Commerce, art. 32; Ecuador Code of Commerce, art. 35; Guatemala Code of Commerce, art. 21; Honduras Code of Commerce, art. 26; Mexico Code of Commerce, art. 37; Salvador Code of Commerce, art. 19; Uruguay Code of Commerce, art. 44; Venezuela Code of Commerce, art. 35; Decree of the Revol. Gov. of France, 2 prair., Year II; L. 24 prair. Year XI; Code of Commerce of Servia, art. 11.)

5. The carrying and keeping of books of acount in Spanish being virtually required by the Code of Commerce in force in the Philippine Islands, Act No. 2972 of the Philippine Legislature which requires that such books be kept in English and native languages together with the Spanish is but an implied amendment to said Code of Commerce. And since the Code of Commerce was tacitly approved and sanctioned by the Congress of the United States (Act of July 1, 1902, Sec. 86, 32 Stat. 691, 712), any taint of unconstitutionality in said Act No. 2972 must necessarily be wiped out. (Public Utility Commisioners v. Ynchausti & Co., 251 U. S. 401.)
6. Act No. 2972 of the Philippine Legislature does not work hardship upon, nor deny Chinese the equal protection of the law, nor the right to use their own language in private commerce. Neither it is a class legislation. It is a proven fact that out of 12,000 Chinese merchants in the Philippines only some 4,000 are unable to keep their books of account in either English, Spanish, or native dialect. And not all of the 4,000 Chinese merchants are required to keep books of account. There is no provision in Act No. 2972 prohibiting the use of foreign languages in private business. Furthermore Act No. 2972 of the Philippine Legislature did not choose among various languages spoken the world over the English and Spanish languages and the Philippine dialects, but simply adopted these languages for a fiscal measure since they are the official languages. Japanese, Hindus, Syrians, Greeks, French, and hundreds of foreign merchants are likewise affected by the Act. So Act No. 2972 cannot be termed a class legislation. (Barbier v. Connolly, 113 U. S. 27, 32; Middleton v. Texas Power and Light Co., 249 U. S. 152; R. Moore & Co. v. North Dakota, 240 U. S. 510; Dominion Hotel [illegible] nn, 249 U. S. 265.)
7. Cases cited in the brief in support of [illegible] writ of certiorari are not applica[illegible] the reasons stated in the brief.
8. Act No. 2972 is a valid exercise of the [illegible] taxing powers. The Philippine Government is vested with full power to legislate according to its conception of public

PAGE

I.

Act No. 2972 is void as being on its face contrary to the prohibitions of the Philippine Bill of Rights and the Fifth Amendment to the Federal Constitution. It punishes in the petitioners and others similarly situated what is permitted to others as lawful without any distinction of circumstances, to wit, the use of their native tongue in a necessary incident of a legitimate occupation. This is an unjust and illegal discrimination which is made inevitable by this Act 80

II.

The Act is also void because it denies to petitioners and others similarly situated the rights, privileges and immunities secured to them by the treaties between the United States and China which secure to Chinese nationals "most favored nation" treatment ... 97

III.

This Court has jurisdiction to determine the validity of the Act untrammeled by the construction thereof adopted by the Philippine Court. That construction is clearly erroneous. It is completely at variance with the plain import of the language of the Act 99

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1

IN THE

Supreme Court of the United States

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

2

vs.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA as Fiscal for the City of Manila and PEDRO CONCEPCION as Judge of the Court of First Instance of Manila,

Respondents.

3

Notice.

Notice is hereby given that upon their petition verified the 24th day of June, 1925, the certified transcript of the record in the Supreme Court of the Philippine Islands in the case entitled Yu Cong Eng *et al.* Petitioners, v. W. Trinidad, etc., *et al.*, Respondents, including all proceedings

4 therein in said Court, the above named petitioners will submit a motion together with said petition and their brief in support thereof, copies of which are hereupon served upon you, to the Supreme Court of the United States in its Court Room at the Capitol in the City of Washington in the District of Columbia on October 5th, 1925, at the opening of Court on that day, or as soon thereafter as counsel can be heard.

Dated, June 26th, 1925.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
FREDERIC R. COUDERT, JR.,
Counsel for Petitioners.

5

The foregoing notice is hereby accepted, and service of a copy thereof, and of the motion, petition and brief therein mentioned, is hereby acknowledged this ..... day of July, 1925.

....., Counsel for Respondents.

6

Motion For Leave to File Petition For Writ of Certiorari.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,
Petitioners,

vs.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA as Fiscal for the City of Manila and PEDRO CONCEPCION as Judge of the Court of First Instance of Manila,
Respondents.

Now come the petitioners Yu Cong Eng and Co Liam, by Frederic R. Coudert, Allison D. Gibbs and Frederic R. Coudert, Jr., their counsel, and move for leave to file the petition hereto annexed for a writ of certiorari, and further move for a rule to be entered and issued directing the Supreme Court of the Philippine Islands and all the judges and officers of said court to show

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cause why a writ of certiorari should not issue, and why said petitioners should not have such other and further relief or both in the premises as may be just.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
FREDERIC R. COUDERT, JR.
Counsel for Petitioners.

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12

Petition for Writ of Certiorari to the Supreme Court of the Philippine Islands.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1925.

YU CONG ENG AND CO. LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

vs.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVILLA as Fiscal for the City of Manila and PEDRO CONCEPCION as Judge of the Court of First Instance of Manila,

Respondents.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Yu Cong Eng and Co Liam, by their counsel, respectfully shows as follows:

1.—That your petitioners are Chinese nationals legally within United States territory, of age and residents of the City of Manila, where

16 they are engaged in commercial business (Rec., pp. 1-10; 33-35).

II.—That the respondent W. Trinidad is the duly appointed, qualified, and Acting Collector of Internal Revenue of the Philippine Islands, with his office and residence in the City of Manila (Rec., pp. 829-833).

III.—That the respondent, Eulogio P. Revilla, is the duly appointed, qualified, and Acting Fiscal or prosecuting attorney of the City of Manila
17 and a resident of the said city.

IV.—That the Honorable Pedro Concepcion is one of the duly appointed, qualified and acting judges of the Court of First Instance of the City of Manila, and also a resident of said city.

V.—That on the 21st day of February, 1921, the Philippine Legislature enacted and approved Act No. 2972 in the following language:

"No. 2972. "AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND
18 TO ESTABLISH PENALTIES FOR ITS VIOLATION.

"*Be it enacted by the Senate and House of Representatives of the Philippines in legislature assembled and by the authority of the same*:

"SECTION 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

"SECTION 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.

"SECTION 3. This Act shall take effect on November first, Nineteen hundred and twenty-one.

"Approved, February 21, 1921."

VI.—That the petitioner, Yu Cong Eng, is a Chinese merchant engaged in the lumber business at No. 696 Juan Luna, Manila; that he neither reads, writes, nor understands the English or Spanish language or any local dialect; that he keeps the books of account of his business in Chinese characters; that by reason of his ignorance of the English and Spanish languages and of all local dialects he is unable to keep his books in any language other than his own; that even if he should employ a bookkeeper capable of keeping his books in the English or Spanish language, or in any local dialect, he would have no means of personally revising or ascertaining the contents or correctness of the books thus kept; that the employment of such a bookkeeper, unless he should also be a linguist, would entail as a necessary consequence the employment of a translator or interpreter familiar with the Chinese language and the language or dialect in which such books might be kept in order to enable the petitioner, Yu Cong Eng, to ascertain by hearsay the contents thereof; that in the event of being compelled to employ such a bookkeeper and translator or interpreter, the petitioner, Yu Cong Eng, would then be com-

22 pletely at the mercy of such employees who might not only cheat and defraud him of the proceeds of his business, but involve him in civil or criminal liability in the conduct of his business; that under the provisions of said Act No. 2972 the petitioner, Yu Cong Eng, is prohibited from even keeping a duplicate set of accounts in his own language and would, in the event of the enforcement of said law, be compelled to remain in total ignorance of the status of his business; that for the reasons stated the enforcement of said Act would drive the peti-
23 tioner, Yu Cong Eng, out of business as well as the many other Chinese merchants in the Philippines, who are in like circumstances. (Rec., pp. 1-10 etc.).

VII.—That the petitioner, Co Liam, is a Chinaman and conducts a small general merchandise business, commonly known in the Philippines as a Chinese *tienda* at No. 364, Calle Santo Cristo, Manila; that he carries a stock of goods of about P10,000; that his sales taxes amount to from P40 to P60 per quarter; that he neither
24 reads, writes nor understands the English or Spanish language, or any local dialect; that he keeps the books of account of his small business in Chinese (which is the only language known to him) without the assistance of a bookkeeper; that he has been losing money for some time in the operation of his business, but that even in the most prosperous times the profits of his small business could never be sufficient to justify the employment of a Filipino bookkeeper or a bookkeeper of any other nationality capable of keep-

ing his books in English, Spanish or any local dialect; that even if he could afford to employ such a bookkeeper, he would have no means of personally revising or ascertaining the contents or correctness of the books thus kept; that the employment of such a bookkeeper, unless he should also be a linguist, would entail, as a necessary consequence, the employment of a translator or interpreter, familiar with the Chinese language, and the language or dialect in which such books might be kept, in order to enable the petitioner, Co Liam, to ascertain by hearsay the contents thereof; that in the event of being compelled to employ such a bookkeeper and translator or interpreter, the petitioner, Co Liam, would then be completely at the mercy of such employees, who might not only cheat and defraud him of the proceeds of his business but involve him in civil or criminal liability in the conduct of his business; that under the provisions of said Act No. 2972 the petitioner, Co Liam, is prohibited from even keeping a duplicate set of books or accounts in his own language, and would, in the event of the enforcement of said law, be compelled to remain in total ignorance of the status of his business; that for the reasons stated the enforcement of said Act would drive the petitioner and many other Chinese merchants or *tienda* keepers in the Philippines who are in like circumstances out of business. (Rec., pp. 33-35, etc.).

VIII.—That the respondent, Collector of Internal Revenue, in his capacity as such on the 2nd day of March, 1923, inspected and seized

the account books of the petitioner, Yu Cong Eng, which are in the Chinese language, informed the respondent City Fiscal of the failure of the petitioner, Yu Cong Eng, to keep his said account books in the English or Spanish language, or in any native dialect, and wrongfully and unlawfully recommended the prosecution of the petitioner, Yu Cong Eng, for the violation of said Act No. 2972; that as a result of said information and recommendation, the respondent City Fiscal wrongfully and unlawfully drafted, signed, and filed a criminal complaint before the respondent, the Honorable Pedro Concepcion, as Judge of the Court of First Instance of the City of Manila, against the petitioner, Yu Cong Eng, charging him with the violation of said Act No. 2972, a copy of which criminal complaint marked Exhibit "A" for identification is attached hereto and made a part of this petition; that as a result of the filing of said criminal complaint, the respondent Honorable Pedro Concepcion, as Judge of said Court of First Instance of the City of Manila, wrongfully and unlawfully issued a warrant for the arrest of the petitioner, Yu Cong Eng, and caused him to be arrested thereunder.

IX.—That the said respondent Collector of Internal Revenue, said Fiscal of Manila, and the said respondent Judge of the Court of First Instance, threaten to and will unless restrained and prohibited by this Honorable Court, cause all of the other said Chinese merchants to be arrested, prosecuted and convicted under said Act No. 2972, as shown by a letter from the said

respondent Collector of Internal Revenue to the 31
said respondent Fiscal of Manila, published in the *Daily Bulletin* of March 2, 1923, a copy of which publication marked Exhibit "B" is attached hereto and made a part of this petition.

X.—*That there are approximately* 12,000 *other Chinese merchants in the Philippine Islands similarly situated and who are and will be similarly affected by said Act No.* 2972, *and therefore the subject matter of the present suit is of common and general interest to all the other Chinese merchants similarly situated; that by reason of their* 32
great number it was impracticable to bring them all before the Court, and that therefore petitioners brought this action for the benefit of themselves and of all other Chinese merchants similarly situated and affected as aforesaid. (Rec. p. 7 of Exh. C).

XI.—That of all nationalities there are altogether about 85,000 merchants in the Philippine Islands; that of this number about 71,000 are Filipinos; that of the remaining 14,000 about 1,500 are of either American, Spanish, or British
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nationality, and of the remaining 12,500 approximately 12,000 are Chinese; that the aggregate business transacted by the said 12,000 Chinese merchants represents more than 60 per cent of the total business done by all the merchants in the Philippine Islands; that for the reasons stated the burden of said Act No. 2972 is imposed almost exclusively upon said 12,000 Chinese merchants, including your petitioners (Rec., p. 7 of Exh. C).

XII.—That not to exceed 1 per cent. of the Chinese merchants in the Philippine Island understand English, Spanish or any local dialect sufficiently well to be able to keep or revise their own books of account in any of those languages, and not to exceed 1 per cent. of said merchants have even a working knowledge of any of said languages such as would enable them to in any manner inform themselves as to the status of books of account kept in said languages, except by means of translators or interpreters; that the profits of the business of more than one-half of said Chinese are so small that they would be unable to afford the employment of foreign bookkeepers or of translators or interpreters familiar with their own language and with that in which their books of account might be kept; that for the reasons stated the enforcement of said Act would drive the great majority of the said Chinese merchants out of business, and would cause great and irreparable damage to the business of the remainder. (Rec., pp. 271, 273; 356-357).

XIII.—That there are no considerable number of unemployed competent bookkeepers available in the Philippines capable of keeping books of account in English, Spanish or any local dialect to fill the positions which would be created by the enforcement of Act No. 2972, even supposing that the Chinese merchants would be able to employ them. (Rec., p. 274).

XIV.—That the said 12,000 Chinese merchants as shown by the records of the Internal

Revenue Department, presided over by the respondent, W. Trinidad, now pay and for many years last past have been paying more than 60 per cent. of the taxes levied on the total mercantile transactions of the Philippine Islands, thereby conclusively demonstrating that the said Chinese merchants faithfully and honestly record their business transactions in their own language, and that the respondent, Collector of Internal Revenue, and his agents and inspectors are, and have, at all times, been able to fully inform themselves from the books of said Chinese merchants thus kept in their own language, of all the business transacted by them; that the Chinese written language is a scientific language employed by the Chinese, Japanese and Koreans, who constitute more than one-fourth of the entire population of the world. That there are in the Philippine Islands available for employment by the Bureau of Internal Revenue enough Chinese accountants to make such inspections of the books of account of Chinese merchants as may be necessary to insure true declarations of their sales and income. That there are 43 native languages divided into 87 local dialects in the Philippine Islands, most of which are unscientific and crude in character. For the reasons stated said Act No. 2972 is a wholly unreasonable and unnecessary burden upon the said Chinese merchants. (Rec., p. 279; Exh. F of Rec.).

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XV.—That said Act No. 2972 is unjust and without precedent in the United States or in any other country where the Chinese merchant is doing business, as shown by the resolutions

adopted and signed by the principal business houses in the City of Manila, the American Chamber of Commerce of China; the American Chamber of Commerce of Tientsin; the Executive Committee of the Foreign Trade Bureau of the Seattle Chamber of Commerce; the Seattle Chamber of Commerce and Commercial Club; the Portland Chamber of Commerce; the Foreign Trade Committee of the San Francisco Chamber of Commerce, and the Merchants' Association of New York, copies of which are respectively marked Exhibits "C," "D," "E," "F," "G," "H," "I," and "J" and attached hereto as a part of this petition.

That the enactment of said Act No. 2972 has caused a vigorous protest on the part of the Chinese foreign office to the United States Minister to China and has caused and is causing prejudice to the good understanding and friendly relations between the Chinese and United States governments, as shown by a cable from United States Minister Crane from Peking to the Secretary of State at Washington, dated April 28, 1921; that the Secretary of War and Chief of the Bureau of Insular Affairs urged the repeal of the Act, as appears from a letter and cable from Chief of the Bureau of Insular Affairs at Washington, to Governor General of the Philippine Islands, copies of which marked Exhibits "M," "N" and "O," respectively, are hereto attached and made a part hereof (Rec., p. 279 etc.).

XVI.—On September 15, 1923, petitioners submitted to the Supreme Court of the Philippine Islands a petition for prohibition praying *inter*

alia for judgment (a) declaring the unconsti- 43
tutionality of Act No. 2972 and (b) granting an order against respondents to absolutely desist and refrain from further action in said criminal case against the petitioner Yu Cong Eng and from instituting or prosecuting any other criminal action under said Act No. 2972; (c) and petitioners further prayed for a preliminary injunction.

The Supreme Court of the Philippine Islands issued a preliminary injunction but on February 6, 1925, rendered a decision, two judges dissenting, sustaining the Act and dismissing the 44
petition for prohibition.

The decision of the Court below was predicated upon a fanciful construction of the Act which amounted to the crudest sort of judicial legislation. The opinion of the Court (copy annexed hereto as Exhibit K) at the outset concedes in effect that if the Act really means what it says, it must be declared unconstitutional. It then attempts by an annihilating distortion of the plain and simple language of the Act to work out a less objectionable law.

The Court discovered that the express prohi- 45
bition of the Act meant only that if certain unascertained revenue books were kept in the designated languages, then other books could be kept in any languages.

That the construction placed upon said law by the Court below in order to avoid its palpable unconstitutionality is entirely fanciful and contrary to the plain import of the language used, and is in effect a re-drafting of the law.

46

Two judges dissented on the ground that the Act was unconstitutional. (Copies dissenting opinion are annexed as Exhibit L.)

XVII.—Your petitioners are informed and believe that Act No. 2972 is null and void under the Constitution and treaties of the United States and the Philippine Bill of Rights.

That the law as redrawn by the lower Court remains void for uncertainty as it does not specify which books of account are to be kept in the specified languages.

47

XVIII.—That in instituting, entertaining, and proceeding with the prosecution of said criminal action against the petitioner, Yu Cong Eng, and in otherwise enforcing and threatening to enforce said Act No. 2972, as hereinbefore set forth, said respondents are acting without and in excess of their jurisdiction; that the enforcement of said Act No. 2972 will cause multitudinous and persecuting criminal prosecutions, and the prosecution of said criminal action against the petitioner, Yu Cong Eng, and the threatened institution and prosecutions of similar criminal ac-

48

tions against your petitioner, Co Liam, and other Chinese merchants of the Philippine Islands is causing, and will, unless restrained and prohibited by this Honorable Court, continue to cause your petitioners, and all of the other Chinese merchants of the Philippine Islands, great and irreparable disturbance and injury in their business and property rights and interests, and for which they have no other plain, speedy and adequate remedy in the ordinary

courts of law by bill of exceptions, appeal, or *otherwise*. 49

XIX.—That the right of the petitioner, Yu Cong Eng, to defend and appeal if convicted in the said criminal action already filed against him, or in any succeeding similar criminal action which may be instituted against him, and the right of the petitioner, Co Liam, and of each and all of the other Chinese merchants of the Philippines to defend, and, in the event of conviction, to appeal to the Supreme Court, is an entirely inadequate remedy for the reason that 50 similar prosecutions are threatened and may and will be instituted for each new entry or daily or weekly transaction recorded in their books of account in the Chinese language, and the threats and fear of repeated prosecutions and of the imposition of the severe punishment prescribed for the violation of said Act No. 2972, would and will compel your petitioners and many others of said Chinese merchants to discontinue business or to comply with the provisions of said law to their great and irreparable injury.

XX.—That the petitioners *and the twelve thousand or more other Chinese for whose benefit this action is prosecuted are now, and for many years last past have been, domiciled in the Philippine Islands and engaged in business as merchants in said Islands;* that as such merchants, they are entitled under the treaties now in force between the United States and China to all the rights, privileges and immunities enjoyed in the Philippine Islands by the citizens 51

52 and subjects of the 'most favored nation'; that under said treaties the petitioners and said other Chinese are entitled to the same rights, privileges and immunities as the citizens and subjects of Great Britain and Spain; that said treaties have the same force and effect in these Islands as do the laws of the Congress of the United States; that said Act No. 2972 is in violation of said treaties in that it deprives the petitioners and said other Chinese merchants of their liberty and property, whereas it imposes no burden whatever upon the citizens and sub-
53 jects of Great Britain, Spain, and Latin American countries.

Your petitioners will present, in support of this petition, a brief discussing fully the contentions above stated with citation of authorities.

Wherefore your petitioners pray that this Honorable Court will cause a writ of certiorari to be issued requiring the Supreme Court of the Philippine Islands to certify the record and proceedings therein so that this Court may act thereon as of right and according to law ought to be done.

54 And your petitioners will ever pray.

FREDERIC R. COUDERT,
ALLISON D. GIBBS,
FREDERIC R. COUDERT, JR.,
Counsel for Petitioners.

55

STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.:

FREDERIC R. COUDERT, being duly sworn, deposes and says, that he is one of the counsel for the petitioners herein; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief; that the reason why this verification is not made by petitioners is that petitioners are not within the continental United States, and deponent is one of their counsel and is familiar with the facts stated in the petition.

56

I hereby certify that I have examined the foregoing petition and that in my opinion the same is well founded and is entitled to the favorable consideration of this Court.

FREDERIC R. COUDERT.

Sworn to before me this 24th day of June, 1925.

CHAS. A. CONLON,
(SEAL) Notary Public #204,
New York County.

57

58

Exhibit "A."

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE COURT OF FIRST INSTANCE
OF MANILA.

59	THE PEOPLE OF THE PHILIPPINE ISLANDS, Complainant, vs. YU CONG ENG, Accused.	COMPLAINT. Violating of the Accounting Law. Cause No. 25551.

The undersigned accuses Yu Cong Eng of the violation of Act No. 2972 of the Philippine Legislature, committed as follows:

60 That on or about and during the time included between the 1st of January and the 27th of February, 1923, both dates included, the said accused was engaged in commerce for the purpose of profit in the City of Manila, Philippine Islands, having for this purpose an establishment at No. 696 Calle Juan Luna, district of Binondo of said city and in the exercise and development of his business the said accused, wilfully, illegally, criminally and fraudulently kept and caused to be kept the books of account of his said business

corresponding to said period of time, solely in Chinese instead of keeping them or causing them to be kept in English, Spanish or any local dialect, thereby hindering and obstructing the authorized agents and representatives of the Government of the Philippine Islands and of the City of Manila in the examination and revision of the said books of account and obstructing in this manner the ascertainment and determination of the entire amount which said accused, owed, owes or shall owe for licenses, permits, taxes and contributions. 61

In violation of the law. 62

ALFONSO FELIX,
Assistant Fiscal.

Subscribed and sworn to before me this 7th day of March, 1923, in the City of Manila, Philippine Islands, by Alfonso Felix, Assistant Fiscal of the City of Manila.

(Sgd.) PEDRO CONCEPCION,
Judge of the Court of First Instance.

A preliminary investigation has been made in this case under my direction and witnesses examined under oath in accordance with the provisions of Sec. 2465 of Act No. 2711 of the Philippine Legislature. 63

ALFONSO FELIX,
Assistant Fiscal.

64

Exhibit "B."

MANILA DAILY BULLETIN.

Manila, P. I., Friday, March 2, 1923.

"I have the honor to inform you that Yu Cong Eng, a Chinese merchant doing business at 696 Juan Luna, Manila, has violated the provisions of section 1 of Act No. 2972 of the Philippine Legislature which went into effect on January 1 of the present calendar year, penalized under section 2 of the same Act, by keeping his books
65 of account from January 1, to February 27, 1923, in Chinese and not in English, Spanish, or any native dialect as required by law."

In the letter quoted above Collector of Internal Revenue Trinidad recommends the first prosecution under the bookkeeping law, but it is understood that more such recommendations will follow wherever it is found that the law is being violated.

The Collector stated yesterday that the Yu Cong Eng case is not asked to be filed as a test case, to determine the constitutionality of the law; he said that every violation encountered will
66 be dealt with similarly.

Exhibit "C."

RESOLUTION.

WHEREAS, the undersigned merchants, doing business in the Philippine Islands, consider that a certain law recently passed by the Legislature of the Philippine Islands and approved by ex-Governor-General Harrison, known as Act No. 2972, and which makes it illegal after a certain date therein mentioned for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in a language other than English, Spanish, or a native dialect, and providing heavy penalties for violations thereof, is very prejudicial to the Chinese community; and

WHEREAS, the business and commerce of the Philippine Islands are largely conducted by Chinese merchants, and a law like the one under consideration, which, if the practicability of its enforcement be assumed, would necessitate the Chinese giving up their business establishments, would vitally affect the economic situation of trade in the Islands and react in an important way most unfavorably upon all merchants and business of every kind in the country, and the undersigned accordingly conceive that they have a proper and direct interest, aside from other considerations, in having said Act No. 2972 repealed; and

WHEREAS, the law will work unnecessary hardship on the Chinese merchants by putting them

70 to extra expense for the employment of bookkeepers using one of the aforesaid languages; and

Whereas, most of the Chinese merchants can neither speak, read, nor write any of the languages prescribed as aforesaid, and, consequently, would be unable to direct their bookkeepers or examine their books for themselves; and in view of the large number of Chinese merchants resident in the Philippine Islands and the relative scarcity of competent bookkeepers, particularly

71

Whereas the enforcement of the said law will interfere greatly with the business of the Chinese merchants in the Philippine Islands and will thus be contrary to the fundamental ideas of justice and fair play; and

72 Whereas the law is wholly unnecessary in nature, its enactment not having been heard of in any country than the Philippine Islands; and

Whereas the Islands are just passing through one of the most acute financial crises in their history, and the enforcement of such a law will augment the severity of the economic depression, on account of its detrimental effects on the local Chinese merchants; and

78 Standard Oil Co. of New York,
By J. Maddocks.
Wise & Co.,
R. E. Humphreys, Pres.
Lutz & Zwilling,
P. E. Zwilling, member of firm.
Peck and Wright Buggy Co.,
F. Franklin, Mgr.
W. H. Anderson & Co.,
W. H. Reynolds, Vice-Pres.
Chester Lumber Co.,
[illegible]
44 [illegible]
[illegible]
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78 [illegible]
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[illegible]

79

Babcock & Templeton, Inc.,
W. R. Babcock.
Asia Banking Corporation,
W. J. Bolden, Mgr.
Wm. Shaw Palace,
T. G. Henderson, Mgr.
Benjamin Franklin Car Co.,
E. A. Asch, Pres. and Mgr.
The Admiral Line (Pacific Steamship Co.),
J. E. Armstrong.
ling Co., Ltd.,
& Mgr.

80

Treas.
Inc.,
sident.
nc.,
sident.

Machy. Co.,

81

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de San Miguel (San

n. Mgr.

.,

82 Union Ins. Soc. of Canton, Ltd.,
Toyo Kisen Kaisha,
C. L. Goodrich.
China, Japan & S. A. Trading Co.,
A. S. Cuttridge, Mrg.
J. R. Redfern & Co., Ltd.,
C. C. Hunter, Vice-President.
For London & Scottish Assn. Corp., Ltd.,
G. C. Hunter, Agent.
The McCullough Printing Co.,
F. H. Stevens, Pres.
The Auto Supply Co.,
83 W. W. Weston, Mgr.
Denniston, Inc.,
J. C. West, Asst. Mgr.
For the International Banking Corp.,
S. Williams, Mgr.
Hanson & Orth.
Willitts & Patterson, Ltd.,
G. C. Arnold, Pres.
Philippine-American Drug Co.,
(Successors to Botica Boie Co.)
Roy H. Springer,
pp. Levy Hermanos,
84 Leon Dreyfus.
Philippine Education Co., Inc.,
H. J. Hazelton, Secy.-Treas.
Camera Supply Co.,
J. C. Cottinger,
Colorado Mining Co.,
H. B. McCoy.
The Robert Dollar Company,
Victor C. Hall.
Pacific Mail S. S. Co.,
E. J. Brown, Acting Agent.

Walter E. Olsen & Co., 85
L. McCall, Vice-Pres.
C. M. Cotterman & Co., Inc.,
C. M. Cotterman, Pres.
W. Solomon.
The Globe Drug Store,
P. W. Ruston,
B. E. Green.
C. Alkan, Inc.,
P. Sintzenich.
Englebert & Munoz,
Jose Munoz y Lopez.
Clark & Co., 86
G. T. Merrman, Sec.-Treas.
The Cooper Company,
I. B. Findlay, Asst. Gen. Mgr.
Yangco, Rosenstock & Co., Inc.,
C. W. Rosenstock, V. P. & G. M.
Manila Tire & Rubber Co.,
D. M. Burchfield, Mgr.
Milton E. Springer Co.,
Milton E. Springer, Pres.
Los Angeles Pacific Nav. Co.,
J. R. Wilson, Gen. Agent.
J. R. Wilson, Inc., 87
By J. R. Wilson.
Frank & Co., Inc.,
G. Frank.
Internationl Com. Co.,
H. H. Buck.
Flecha Point Lumber Co.,
G. E. Carpender, Pres.
Muller, Maclean & Co., Inc.,
H. H. Sage, Agent.
General Supply Co.,
S. Thomas, Gen. Mgr.

88 Muller & Phipps (Manila), Ltd.,
John Meyer, Mgr.
Welch, Fairchild & Co., Ltd.,
G. G. Gordon.
Manila Commercial Co.,
By Antonio Gimenez, Manager.
Frank Waterhouse & Company,
A. G. Henderson, Local Manager.
La Insular, Loan Office and Jewelry Store,
Juan Javier, S. and C.
Juan Javier, Manager.
Commercial Pacific Cable Co.,
89 P. J. Harwood, Superintendent.
Laing & Wright,
F. C. Laing.
Atkins, Kroll & Co.,
J. G. Jefferys, Manager.
Alhambra Cigar and Cigarette Mfg. Co.,
Geo. Bordfeldt & Co.,
Fred. E. Krieghoff, Accountant.
The St. Louis D. G. Stores,
A. Ortiz, Vice-Pres.
Singer Sewing Machine Co.,
G. E. Brewster.
90 Norton & Harrison Co.,
F. C. Hagedorn, Vice-Pres.
Christenson, Hanify & Weatherwax,
C. P. Ladd.
American Express Co.,
W. D. Inman.
Clarke & Larkin,
W. W. Larkin.
Philippine Refining Corporation,
Fred. A. Leas, Manager.
The Caswell Import Co., Inc.,
T. Ebsen, Manager.

M. J. Ossorio. 91
The Eastern Extension, Australasia and China
Telegraph Company, Limited.
F. A. Betts, Superintendent.
The Bank of the Philippine Islands,
Juan de Ormaechea, Vice-President.
For the Yokohama Specie Bank, Ltd.,
T. Kasuya, Manager.
The Koster Company,
By W. N. Chatfield.
Cooperative Agricola de Filipinas,
Jose Ventura, Manager.
P. P. Neuss, Hesslein & Co., 92
A. G. Kenff.
Electrical Supply Co., Inc.
Montgomery Ward & Co., 75 Escolta,
By J. F. Quinn.
Luis Xiques,
Luis Xiques.
Monarch Trading Company, Inc.,
By J. E. Harris, Jr., Pres.
John Rothschild & Co.,
G. P. Sorensen, Resident Mgr.
Por El Meridian,
J. B. Lammoglia.
Purkis & Herber, 93
By G. G. Purkis.
Levy & Blumm, Inc.,
Angel P. Adia, Secretary.
J. P. Heilbronn Co.,
By Ames. G. Bellis, Treas.
Ohta Development Co.,
By C. Hawagara, Mgr.
Gibson Furniture Company, Inc.,
W. F. Daland, Pres. & Treas.

94

The Island Trading Co., Inc.,
By M. Goldenberg, Manager.
S. E. Diaz & Company, Inc.,
S. E. Diaz, Pres. & Gen'l Mgr.
Garcia Bosque, Pomar & Cia.,
Successors de la Vda. de E. Bota,
C. Garcia Bosque.
Martin Vaguedes, of Cranston Engineering Co.
Thurlow & Company, Inc.,
By R. W. Thurlow.
Lime Kilns, Inc.,
95 By W. C. Taylor.
Rubio Bros.,
By Jose Rubio.
Harry E. Keller Electric Co., Inc.,
Por Harry E. Keller, Pres.
Brias Roxas, Inc.,
M. Brias, Asst. Mgr.
E. Viegelmann & Co., Inc.,
By Wilhelm Jarck, Vice-Pres.

96

97

Exhibit "D."

RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE, AMERICAN CHAMBER OF COMMERCE, APRIL 12, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal, after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands, to keep their books of account in languages other than English, Spanish, or a Philippine dialect, 98
and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of merchandise throughout the Islands; and

WHEREAS, many, and probably the greater part, of these industrious Chinese merchants would find it impracticable to conform to the regula- 99
tions of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be is unanimously

RESOLVED, That we, the American Chamber of Commerce of China, give our support to the attached protest of the Chinese General Chamber of Commerce, Shanghai, in the belief that the omission of the Chinese language from the above-mentioned law is an unfortunate over-

100 sight and that either this omission should be promptly remedied by amendment or the law repealed.

AMERICAN CHAMBER OF COMMERCE OF CHINA,

(Sgd.) W. H. CHAPMAN, Secretary.

Exhibit "E."

RESOLUTION PASSED BY THE AMERICAN CHAMBER OF COMMERCE AT TIENTSIN, CHINA, MAY 12,
101 1921.

WHEREAS the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of merchandise throughout the Islands; and

WHEREAS, many, and probably the greater part, of these industrious Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless
102 make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be is unanimously

RESOLVED, That we, the American Chamber of Commerce in Tientsin, give our support to the protest of the Chinese Chamber of Commerce of Tientsin, in the belief that the omission of the Chinese language from the above-mentioned law is an unfortunate oversight and that either this omission should be promptly remedied by an amendment or the law repealed.

Exhibit "F."

RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE OF THE FOREIGN TRADE BUREAU, SEATTLE CHAMBER OF COMMERCE ON MAY 18, 1921.

WHEREAS, the Legislature of the Phiippine Islands has passed a law, known as Act No. 2972, making it illegal after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in language other than English, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

WHEREAS, the Chinese merchants of the Philippines have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of American merchandise throughout the Philippines; and

WHEREAS, many, and probably the greater part, of these Chinese merchants would find it impracticable to conform to the regulations of the above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; therefore, be it

RESOLVED, That the Executive Committee of the Foreign Trade Bureau of the Seattle Chamber of Commerce join in protest against Act No. 2972 of the Philippine Legislature, and request our Congressional delegation in Washington to use its influence on behalf of the interests of the

106 Chinese merchants in the Philippines to bring about the repeal of this law; be it also

RESOLVED, That copy of this resolution be forwarded to the Chamber of Commerce of the United States of America for whatever action it may deem necessary.

Exhibit "G."

107 RESOLUTIONS ADOPTED BY THE SEATTLE CHAMBER OF COMMERCE AND COMMERCIAL CLUB, MAY 23, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as Act No. 2972, making it illegal after November 1, 1921, for any person, company, firm, or corporation engaged in business in the Philippine Islands to keep their books of account in language other than English, Spanish, or a Philippine dialect, and providing heavy penalties for violation of the law; and

108 WHEREAS, the Chinese merchants of the Philippine Islands have to no small extent been instrumental in the growth and development of insular commerce, and have provided a most important part of the machinery for distribution of American merchandise throughout the Philippines; and

WHEREAS, many, and probably the greater part, of these Chinese merchants would find it impracticable to conform to the regulations of the

above law, which would doubtless make it impossible for many to continue in business in the Philippines, thus inflicting upon them undeserved hardship; and

WHEREAS, said law appears to be an arbitrary and unfriendly act toward a friendly nation; therefore, be it

RESOLVED, That the Seattle Chamber of Commerce and Commercial Club request President Harding to cable General Wood and ask him to investigate and report on this matter, and also that copies of this resolution be forwarded to the Washington State delegation in Congress; and be it also

RESOLVED, That copy of this resolution be forwarded to the Chamber of Commerce of the United States of America, and to the Chambers of Commerce in Portland, San Francisco, and Los Angeles, for whatever action they may deem necessary.

112

Exhibit "H."

RESOLUTIONS ADOPTED BY THE FOREIGN TRADE DEPARTMENT OF THE PORTLAND CHAMBER OF COMMERCE AND APPROVED BY BOARD OF DIRECTORS OF THE PORTLAND CHAMBER OF COMMERCE, MAY 25, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law, known as "An Act to define the language of keeping books of accounts and providing a penalty for the same" (No. 2972), which Act permits only the use of such
113 languages as English, Spanish, or native dialects and prohibits the use of the Chinese language; and

WHEREAS, the commerce of the Philippine Islands has been carried on and developed to a large extent for the last 400 years by the Chinese; and

WHEREAS, the greater portion of these Chinese merchants will find it impracticable to conform to the regulations of the above law and
114 probably force a majority of them to discontinue business; and

WHEREAS, this law appears to be an unfriendly act towards a friendly nation and would hinder rather than develop our commerce with other nations which we are so anxious to build up; therefore, be it

RESOLVED, That the Portland Chamber of Commerce call these matters to the attention of the President of the United States, and Congress,

requesting that an investigation of these conditions be made with a view to their alleviation; and be it further

RESOLVED, That copy of this resolution be forwarded to the Oregon delegation in Congress, the Chamber of Commerce of the United States of America, and the Chambers in the Far East.

BOARD OF DIRECTORS, PORTLAND CHAMBER OF COMMERCE,

By P. HETHERTON,
Executive Secretary.

Exhibit "I."

RESOLUTION ADOPTED BY THE FOREIGN TRADE DEPARTMENT OF THE SAN FRANCISCO CHAMBER OF COMMERCE, JUNE 14, 1921.

WHEREAS, the Legislature of the Philippine Islands has passed a law known as Act No. 2972, making it illegal, after November 1, 1921, for any person, company, firm, or corporation, engaged in business in the Philippine Islands, to keep their books of account in any language other
119 than English, Spanish, or the Philippine dialects, and providing heavy penalties for violation of the law; and, further, that the Chinese merchants of the Philippines have to a very important degree been responsible for the growth and expansion of American business in the Philippine Islands, inasmuch as they have provided a very important organization for the distribution of American goods; and

WHEREAS, many of these Chinese business men would be forced, by this law, to abandon their business in the Philippines, representing prob-
120 ably some two hundred million dollars in invested capital; be it therefore

RESOLVED, That the Foreign Trade Committee of the San Francisco Chamber of Commerce give its support to protests of the Chinese merchants of the Philippine Islands against Act No. 2972 and further urge action by the proper officials of the United States Government towards repealing this law, or securing an amendment which will permit the Chinese merchants of the Philippines to continue their business on an equitable basis of competition.

Exhibit "J."

121

THE MERCHANT'S ASSOCIATION OF NEW YORK—PREAMBLES AND RESOLUTIONS ADOPTED JULY 6, 1921.

WHEREAS, the Legislature of the Philippine Islands has enacted a law, No. 2972, February, 1921, providing that after November 1, 1921, it will be illegal for any person, company, firm, or corporation, engaged in business, industry, or other activity for profit in the Philippine Islands to keep their books of account in a language 122
other than English, Spanish, or a native dialect, and that violators of this law will be punished by a fine or imprisonment, or both; and

WHEREAS, such a provision of law is, we believe, unparalleled, unjust, and unnecessary, other countries, including the United States, not having this or any other similar requirement; and

WHEREAS, a large part of the business of the Philippine Islands has for years been in the hands of Chinese merchants, these merchants at 123
present being reported to pay approximately 70 per cent of the business taxes of the country; and

WHEREAS, probably the greater part of these Chinese merchants find it impracticable to keep their books of account in any of the above-mentioned languages, which will therefore force them to withdraw from business in the Philippines; and

130

3. ID.; ID.; ID.:—As a general rule, the question of constitutionality must be raised in the lower court and that court must be given an opportunity to pass upon the question before it may be presented to the appellate court for resolution. (*Cadwalader-Gibson* v. *Del Rosario*, 1913, 26 Phil. 192). Occasionally under a recently enacted statute affecting numerous persons and extensive property rights liable to give rise to a multiplicity of suits and numerous prosecutions, it is proper, right at the threshold of a prosecution, to have the validity of a given law
131 determined in the interest of the accused and of the public, so as to permit of the orderly administration of justice. (*Young* v. *Rafferty*, 1916, 33 Phil. 536; *Kwong Sing* v. *City of Manila*, 1920, 41 Phil. 103; *Dimayuga and Fajardo* v. *Fernandez, et al.*, 1922, 43 Phil. 304.)

4. ID.; ID.; ID.:—Inasmuch as the property and personal rights of nearly twelve thousand merchants are affected by these proceedings, and inasmuch as Act No. 2972 is a new law not yet interpreted by the courts, in the interest of the public welfare and for the advancement of
132 public policy, the question of the validity of Act No. 2972 is determined in these proceedings in prohibition and injunction.

5. ID.; ID.; RULES OF CONSTITUTIONAL CONSTRUCTION:—The presumption is always in favor of constitutionality. To doubt is to sustain. (*Weems* v. *United States*, 1910, 217 U. S. 378; *Adkins* v. *Children's Hospital*, 1923 U. S. Sup. Ct. Adv. Ops. 440).

133

6. ID.; ID.; ID:—A law should be so construed if possible as to avoid conflict with the Constitution, although such construction may not be the most obvious or natural one. When an Act is susceptible of two or more constructions, one of which will maintain and the others destroy it, the Courts will always adopt the former. (*U. S.* v. *Coombs*, 1838, 37 Peters 72; *Gremada County Supervisors* v. *Brogden*, 1894, 112 U. S. 261; *In re Guarina*, 1913, 24 Phil. 37; *Andres Fuentes* v. *Director of Prisons*, No. 22449).

134

7. ID.; ID.; ID.; JUDICIAL CONSTRUCTION OF ACT NO. 2972:—Act No. 2972 admits of three constructions. The first construction is a literal application of the law, and the second construction permitting of the keeping of duplicate sets of account books by merchants, would probably result in holding the law unconstitutional. But the third construction to the effect that the law only intended to require the keeping of such books as were necessary in order to facilitate governmental inspection for taxation purposes, permits the courts to sustain the law. This is a practical judicial construction of a law where the validity of this law is in issue, which gives to the law a meaning accomplishing everything needed by the Government for taxation purposes, without being unduly oppressive on the individual and which permits the courts to uphold the law.

135

8. *ID.*; ID.; ID.; ID.:—Act No. 2972 is a fiscal measure intended to facilitate the work of the Government agents and to prevent fraud in the return of the merchants, in conformity with the sales tax and the income tax. Conceded that the

136 Chinese handle sixty per cent of the aggregate business of the Philippines, approximate equality in taxation demands that they pay something like the same proportion in taxes for the support of the State.

9. ID.; ID.; ID.; ID:—Act No. 2972 is construed as meaning that any person, company, partnership, or corporation engaged in commerce, industry, or any other activity for the purpose of profit in the Philippine Islands, shall keep its account books, consisting of sales book and other
137 records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue, in effect when this action was begun, in English, Spanish, or a local dialect.

10. ID.; ID.; POLICE POWER AND POWER OF TAXATION IN THE PHILIPPINES:—The police power and the power of taxation exist in the Philippine Islands in about the same form and to the same extent as in a State of the American Union.

11. ID.; ID.; RIGHTS OF THE CHINESE IN THE PHILIPPINE ISLANDS:—The rights of Chinese
138 aliens resident in the Philippine Islands are not less than the rights of American and Philippine citizens. Nor more.

12. ID.; ID.; THE LANGUAGE QUESTION IN THE PHILIPPINES:—A description of the language situation in the Philippines discloses some of the difficulties which have beset the attempt to hasten the adoption of a common language in the Philippines. The Filipino people have cheerfully imposed upon themselves the burden of acquiring

one or more languages other than their native languages. The purpose of their elective representatives in approving Act No. 2972 is to require conformity with governmental policy by a large class of foreign residents, so as to permit of a closer approximation to equality in taxation. 139

The issue in these proceedings is the validity of Act No. 2972 of the Philippine Legislature, popularly known as the Chinese Bookkeeping law. It is a question of paramount importance which the record shows, has been laid before this Court following the failure of diplomatic negotiations and executive pressure to secure from the local lawmaking body either the repeal of the law or a modification of its provisions. It is, moreover, a question which, extensive argument and original investigation disclose, stands in the shadowland betwixt constitutionality and unconstitutionality, to the solution of which we propose to give careful consideration. 140

The petitioners are Chinese merchants claiming to represent themselves and all other persons similarily situated and affected, particularly twelve thousand Chinese merchants. The respondents, against whom the petition for prohibition and injunction is directed, are the Collector of Internal Revenue, the Fiscal of the City of Manila, and Honorable Pedro Concepcion, Judge of First Instance of Manila. The allegations of the petition center on the unconstitutionality of Act No. 2972 above mentioned. 141

Inasmuch as the property and personal rights of nearly twelve thousand merchants are affected by those proceedings, and inasmuch as Act No. 2972 is a new law not yet interpreted by the

142 courts, in the interest of the public welfare and for the advancement of public policy, we have determined to overrule the defense of want of jurisdiction in order that we may decide the main issue. We have here an extraordinary situation which calls for a relaxation of the general rule.

The sales tax and the income tax furnish a substantial part of the revenue. Roughly speaking, about P10,000,000 from the sales tax and about P2,000,000 from the income tax are secured annually. (Exhibit 13.) Any appreciable leaks
143 in these sources of governmental revenue would be highly undesirable.

The law is attacked by the petitioners as in violation of treaty and constitutional rights of Chinese merchants, domiciled in the Philippine Islands. It is contended with marked earnestness, that the law is unreasonable and oppressive in nature, and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States and the corresponding provisions of the Jones Law, the Act of Congress of August 29, 1916, guaranteeing to all persons the equal protection of the laws. The law is defended by
144 the City Fiscal of Manila as a proper and reasonable exercise of the police power of the Philippine Government, and of its power of taxation.

Four questions suggest themselves for discussion. What would be the probable effect, if Act No. 2972 was put in operation? What was the purpose of the Legislature in enacting Act No. 2972? What are the respective legal rights of the Chinese and of the Government? What is a logical construction of Act No. 2972? In connection with the first question it is of course, un-

deniable that we cannot declare a legislative Act 145
void because it conflicts with our opinion of what is just or expedient. Nevertheless, the effects and consequences enter with more or less force into consideration, whenever the validity of any law is in issue. (See 2 Lewis' Sutherland Statutory Construction, pp. 908, *et seq.*)

The pleadings, the evidence, and the decision in *Young* v. *Rafferty, supra*, disclose with regard to the mercantile life of the Philippines, the following facts:

There are approximately 85,000 merchants of all nationalities in the Philippines, to whom Act 146
No. 2972 applies, of this number, 71,000 are Filipinos who may use their own dialects, unless they prefer English or Spanish. Approximately 1,500 are American, British, or Spanish subjects, who are permitted to use their native language. Possibly 500 are of foreign nationalities most of whom know the English or Spanish language. Of the remainder, between 10,000 and 12,000 are Chinese. The aggregate commercial business transacted by the Chinese merchants represents about sixty per cent of the total business done by all the merchants in the Philippine Islands. 147
According to Mr. H. B. Pond, vice president and general manager of the Pacific Commercial Company, the Chinese "are the principal distributing factors in the Philippine Islands of imported goods, and the principal gatherers of goods for exportation in the more remote places," and if the Chinese were driven out of business, "there would be no other system of distribution available throughout the Islands." It is further claimed, on the one hand, that not to exceed one per cent of the Chinese merchants in the Philip-

148 pine Islands understand English, Spanish, or a local dialect sufficiently well to be able to keep or revise their own books or account in any one of these languages, and that not to exceed ten per cent have even a working knowledge of either English, Spanish, or a local dialect, and on the other hand, that at least two-thirds of the Chinese businessmen can easily comply with the law.

Counsel for the petitioners is sponsor for the sweeping statement that "the enforcement of Act 2972 would probably cause more danger and less good than any other law which has been en-
149 acted in the world." This strong stand is to a certain extent corroborated by resolutions adopted and signed by the principal business houses in the City of Manila and by number of chambers of commerce (Exhibits C, D, E, F, G, H, I, and J, attached to the petition); by the vigorous protest of the Chinese foreign office (Exhibit K); by the opinions expressed by high officials in the War Department "that the law is fundamentally unwise" (Exhibit L.) and "is obstructive of good understanding with our neighbors" (Exhibit M); and by the testimony of a
150 large number of Chinese merchants and of other well qualified persons to the effect that sufficient bookkeepers are not available, that it would not be possible for many Chinese merchants, especially the smaller ones, to comply with the law, and that if Chinese merchants were compelled to keep their books in any language other than the Chinese language, it would bring serious embarrassment to the great majority and might even drive many of them out of business.

The reply of the fiscal is to the effect that the oppressiveness of the law has been considerably

exaggerated, that it applies as well to Japanese and other foreign merchants who do not complain, that only a relatively small per cent of the Chinese merchants seek to obstruct the enforcement of the law, that bookkeepers are available if the Chinese wish to employ them, and that the new law will facilitate governmental inspection of merchant's books. Numerous witnesses have been called and numerous documents have been offered to substantiate the stand taken by the Government. We will here notice only an indorsement by Wenceslao Trinidad, former Collector of Internal Revenue, and the testimony of Juan Posadas, the present Collector of Internal Revenue. 151 152

Some slight consideration of the language question in general and of the language question in the Philippines in particular, will assist us in determining if the effect of enforcing Act No. 2972 will cause as much hardship and will be so oppressive on one particular nationality as to nullify the law, or whether the judiciary can constitutionally enforce the law. The above brief description of the language situation at least discloses some of the difficulties which have beset the attempt to hasten the adoption of a common language in the Philippines. Yet it is evident, that the Filipino people have cheerfully imposed upon themselves the burden of acquiring one or more languages other than their native languages and have now, through the elective representatives, sought to require conformity with governmental policy by a large class of foreign residents. 153

The purpose of the legislature in enacting Act No. 2972 is disclosed by the decision of this Court

154 in *Young* v. *Rafferty, supra,* by the Messages of the Governor-General, by the hearings before the committees of the Philippine Legislature, and by other sources. All these indicate that the Act is a fiscal measure intended to facilitate the work of the governmental agents and to prevent fraud in the returns of merchants, in conformity with the sale tax and the income tax. For instance, in the decision in *Young* v. *Rafferty, supra,* it was stated: "It need hardly be said that the record which merchants are required to keep of their daily sales under the pro-
155 visions of the circular letter of the Collector set out in the complaint is simplicity itself, and that it will, if honestly and faithfully kept, enable the Government to collect the percentage tax exactly due it."

Conceded that the Chinese handle sixty per cent of the aggregate business of the Philippines, approximate equality in taxation demands that they pay something like the same proportion in taxes for the support of the State.

The presumption is always in favor of constitutionality. As the United States Supreme
156 Court in a case of Philippine origin said: "The function of the legislature is primary, its exercises fortified by presumptions of right and legality, and is not to be interfered with lightly, nor by any judicial conception of their wisdom or propriety." (*Weems* v. *U. S.*, 1910, 217 U. S. 376). This presumption is especially strong in the cases of statutes enacted to promote a public purpose, such as statutes relating to taxation. To doubt is to sustain.

We have been enveigled into a much more elaborate discussion of this case than is at all

essential, for two reasons: firstly, because of the 157
earnestness of counsel who have impressed on the Court with marked ability the merits of their respective cases and the dangers which lurk in a contrary holding; and secondly, because of the effectiveness of the background as indicative of executive purpose and legislative intent. Speaking frankly, however, a majority of the Court has all the time had a well defined opinion which we will now state. We come to the last question suggested, a construction of Act No. 2972 which allows the Court legally to approve it.

A literal application of the law would make it 158
unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish, or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional.

A second interpretation is that the Chinese merchant, while permitted to keep his books of account in Chinese, must also keep another set of books in either English, Spanish, or a native dialect. The respondents claim the law is susceptible of such construction. It occurs to us, 159
however, that this construction might prove as unsatisfactory as the first. Fraud is possible in any language. An approximation to governmental convenience and an approximation to equality in taxation is the most which may be expected.

A third construction which is permissible in view of the history of the legislation and the wording of the statute, is, that the law only intended to require the keeping of such books as were necessary in order to facilitate govern-

160 mental inspection for tax purposes. It has not escaped our notice that the law does not specify what books shall be kept. It is stated by competent witnesses that a cash book, a journal, and a ledger are indispensable books of account for an efficient system of accounting, and that, in the smaller shops, over simpler entries showing merely the daily record of sales and record of purchases of merchandise would be sufficient. The keeping of records of sales, and possibly further records of purchases, in English, Spanish or a native dialect, and the filling out of the
161 necessary forms would serve the purpose of the Government while not being oppressive. Actually, notations in English, Spanish or a dialect of all sales in sales books, and of data in other specified forms are insisted upon by the Bureau of Internal Revenue, although as appears from Exhibit 2, it is doubtful if all Chinese merchants have complied with these regulations. The faithful observance of such rules by the Chinese is not far removed from the offer of cooperation oft made for them by the petitioners or the "translation of the account books" oft mentioned and explained by the respondents.

162 The law, in speaking of any person, company, partnership or corporation, makes use of the expression "its account books." Does the phrase "its account books" mean that all the account books of the person, company, partnership, or corporation must be kept exclusively in English, Spanish, or any local dialect? The petitioners argue that the law has this meaning. Or does the phrase "its account books" mean that the persons, company, partnership, or corporation shall keep duplicate sets of account books, one

set in Chinese and the other a translation into English, Spanish, or any local dialect? Counsel for the respondents urge this construction of the law upon the Court. Or does the phrase "its account books" mean that the person, company, partnership, or corporation must keep such account books as are necessary for taxation purposes? This latter interpretation occurs to us as a reasonable one and as best safeguarding the rights of the accused. And lastly, what effect has Act No. 2972 had upon the provisions of the Code of Commerce on the subject of merchants? Has the Act repealed or modified any article of the Code of Commerce? 163 164

The interrogatories above made at least lead to the deduction that the law is more or less ambiguous and that it will bear two or more constructions.

Let us repeat: Act No. 2972 is a fiscal measure. It should be so construed if possible as to effectuate legislative intent, as collected from the occasion of the law, the circumstances under which it was enacted, the mischief to be remedied, and the policy which dictated its passage. It should be so construed if possible as to avoid conflict with the constitution, although such construction may not be the most obvious or natural one. Giving, therefore, to the law a meaning which will carry out the main governmental purpose and which will permit us to sanction its constitutionality, it seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in the books of accounts or forms subject to inspection for taxation purposes in any other language than either the English or Spanish or a local dialect, al- 165

166 though permitting all merchants to execute their commercial transactions or operations in any language or dialect they may prefer, and although permitting them to keep such other books of account as their personal convenience may dictate and in a language which will come most easily to them. We would go so far as to hold that circular No. 467 of the Bureau of Internal Revenue which this Court once held beyond the power of the Collector of Internal Revenue to promulgate, and any other reasonable regulation of a similar nature, as within the
167 power of the Philippine Legislature to sanction and entirely enforceable.

To any possible plaint by the Government, that this is tantamount to "judicial legislation" we would say: It is not "judicial legislation" as this phrase is commonly used in the spirit of antagonistic fault finding. No words are written into the law. No words are taken out of the law. It is merely a practical judicial construction of a law where the validity of this law is in issue, which gives to the law a meaning accomplishing everything needed by the Government for tax
168 purposes, without being unduly oppressive on the individual, and which permits the courts to uphold the law.

To the petitioners, who by our decision do not obtain all they may wish, we append this word of advice: Under such a construction as is above indicated, the Chinese will not be singled out as a special subject for discriminating and hostile legislation. There will be no arbitrary deprivation of liberty or arbitrary spoliation of property. There will be no unjust and illegal discrimination between persons in similar circum-

169

stances. The law will prove oppressive to the extent that all tax laws are oppressive, but not oppressive to the extent of confiscation. The means to accomplish a necessary interference with private business are no more oppressive upon individuals than is necessary to maintain the State. The law is not intended for the convenience of the trader or the protection of the creditors, but has relation to the public welfare, to the power of taxation, to the right of the government to exist. The Chinese must bear their just proportion of the tax burden, however, unwelcome it may be, without flinching.

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A faint effort has been made by the petitioners to have the Court declare Act No. 2972 void because the subject thereof is not expressed in its title. But legislation should not be embarrassed by such strict construction as is urged by counsel. No distinguishable variance between the title of the law and the body of the law can be discovered after microscopic examination. The law is brief in its terms, and neither the Legislature nor the public need be misled by the title. (*Government of the P. I.* v. *Binalonan*, 1915, 32 Phil. 634.)

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Exhibit "L."

Following are the dissenting opinions of Justices Johns and Street of the Supreme Court in the Chinese Bookkeeping Law case, the constitutionality of which was upheld recently by a majority of the court:

UNITED STATES OF AMERICA, PHILIPPINE ISLANDS

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173 IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

IN BANC.

YU CONG ENG., *et al.*,
Petitioners,

vs.

W. TRINIDAD, Collector of Internal Revenue, *et al.*, Respondents.

174 G. R. No. 20479.

Submitted:

Promulgated:

Justices present:

STREET, MALCOLM, AGANCENA, VILLAMOR, OSTRAND, JOHNS and ROMUALDEZ, *JJ.*

JOHNS, *J.*, Dissenting:—

With all due respect to the well written, exhaustive majority opinion, the only question involved is the meaning and construction which

should be placed upon Act No. 2972, which is entitled "An Act to provide in what language account books shall be kept, and to establish penalties for its violation."

> "Section 1: It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect."
>
> "Section 2: Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos or by imprisonment for not more than two years or both."

It will be noted that Section 1 makes it unlawful for any of the persons specified "to keep its account books in any language other than English, Spanish or any local dialect." Section 2 provides that any person violating the provisions of Section 1 shall be punished by a fine of not more than P10,000.00 or by imprisonment for not more than two years or both. In other words, you have a law prohibiting the doing of certain things and providing a punishment for its violation. Hence, the statute in question is a criminal law, and must be construed as such.

Sutherland on Statutory Construction is recognized as standard authority all over the world, and portions of it are quoted with approval in the majority opinion.

In his Second Edition, Section 531, the author says:

> "WHAT STATUTES ARE PENAL.—Among penal laws which must be strictly construed,

178 those most obviously included are all such acts as in terms impose a fine or corporal punishment under sentence in state prosecutions, or forfeitures to the state as a punitory consequence of violating laws made for preservation of the peace and good order of society."

The majority opinion frankly says:

"A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional."

179

In Section 363, *Sutherland on Statutory Construction*, it is said:

"If a statute is plain, certain and unambiguous, so that no doubt arises from its own terms as to its scope and meaning, a bare reading suffices: then interpretation is needless."

"Section 366. * * * We are not at liberty to imagine an intent and bind the letter of the act to that intent; much less can we indulge in the license of striking out and inserting, and remodeling, with the view of making the letter express an intent which the statute in its native form does not evidence. Every construction, therefore, is vicious which requires great changes in the letter of the statute, and, of the several constructions, that is to be preferred which introduces the most general and uniform remedy.

180

"* * * No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for,

justify any judicial addition to the language 181
of the statute.

"The legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the act read by itself, or in connection with other statutes pertaining to the same subject, is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. * * *

If a legislative enactment violates no constitutional provision or principle, it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy 182
of its passage. Courts have, then, no power to set it aside, or evade its operation by forced and unreasonable construction. If it has been passed improvidently, the responsibility is with the legislature and not with the courts.

"Section 520. STRICT CONSTRUCTION OF PENAL STATUTES.—The penal law is intended to regulate the conduct of people of all grades of intelligence within the scope of responsibility. It is therefore essential to its justice and humanity that it be expressed in language which they can easily comprehend; that it be held obligatory only in the sense in which all can and will understand it. 183
And this consideration presses with increasing weight according to the severity of the penalty. Hence every provision affecting any element of a criminal offense involving life or liberty is subject to the strictest interpretation; and every provision intended for the benefit of the accused, for the same humane reason, receives the most favorable construction. The rule that penal laws are to be construed strictly is perhaps not muchless old than construction itself. It is founded on the tenderness of the law for the

184 rights of individuals; and on the plain principle that the power of punishment is vested in the legislature, not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment. . . . The case must be a very strong one indeed which would justify a court in departing from the plain meaning of the words, especially in a penal act, in search of an intention which the words themselves did not suggest. . . .

" . . . 'The established rule is,' says the court in *Ex parte Bailey,* 'that a penal law must be construed strictly, and accord-
185 ing to its letter. Nothing is to be regarded as included within them that is not within their letter as well as their spirit; nothing that is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended by the legislature. . . .

"Section 521. A penal statute cannot be extended by implication or construction. It cannot be made to embrace cases not within the letter, though within the reason and policy, of the law."

Applying such rules of construction to Act No. 2972, how, where or in what manner is the lang-
186 uage of Act. No. 2972 ambiguous, indefinite or uncertain? Every word of it is intelligible English. Where is there any doubt or uncertainty as to the meaning of any word in the act? As the majority opinion states, if the language used in the act means what it says, it must be construed as unconstitutional. For such reason, the majority opinion holds that the act should not be construed to mean what it says, but that it should be construed to mean what it is claimed the legislature intended it should mean. If the language in the act was indefinite,

uncertain or ambiguous that position would be tenable. 187

Numerous decisions are cited in the majority opinion, all of which are good law, but only two of them are in point upon the main question here involved, and both of them are squarely against the law as laid down in the majority opinion. In legal effect, that opinion holds that Act No. 2972, in its existing form and as it was enacted by the Legislature, is unconstitutional and void. It then proceeds to reconstruct, change and modify the law, and then holds that the law, as reconstructed and modified is constitutional. 188 No law is cited which authorizes this or any other court to reconstruct or modify the plain, simple language of a legislative act, for the simple reason that no such a law will ever be found. But, as Sutherland says, where, as in the instant case, the language is clear and explicit, it must be construed to mean what it says.

On legal principle, the case of *Meyer* v. *Nebraska*, decided by the Supreme Court of the United States at the October Term, 1922, 67 Law ed., 390, cited in the majority opinion, is square in point. The Legislature of Nebraska passed a 189 law entitled "An Act Relating to the Teaching of Foreign Languages in the State of Nebraska," Section 1 of which is as follows:

> "No person, individually or as a teacher, shall in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language."
>
> "Section 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained

190 and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

"Section 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five ($25) dollars, nor more than one hundred ($100) dollars or be confined in the county jail for any period not exceeding thirty days for each offense."

191 That court held the act unconstitutional and void under the Fourteenth Amendment. Notice the similarity of the legal questions involved. Also notice that Section 2 of that act provides that English language may be taught after the pupils have passed the eighth grade. In the instant law, there is no exception whatever. That law was held void by the highest court of the land whose decisions this court should follow and respect. By comparison of the two laws, it will be noted that there is much stronger reason for holding the law unconstitutional in the instant case than in the case of *Meyer* v. *Nebraska*.

192 It will also be noted that the Supreme Court of the United States squarely met and decided the constitutionality of the law.

The Legislature of the Hawaiian Kingdom enacted a law, Section 1 of which is as follows:

"That from and after the first day of October next, no wholesale or retail license shall be granted to any person except upon the express condition that such licensee shall at all times keep full, true and correct books of account of all business transacted by him in connection with such licensed business,

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which books of account shall be kept in the English, Hawaiian or some European language."

And the Supreme Court of Hawaii, in 7 Hawaiian Reports, 489, held that the law was unconstitutional and void.

Compare the language used in the Nebraska Act and the Hawaiian Act with that of Act No. 2972. In each case, it is plain, clear and simple, and there is no doubt as to what the legislature intended. In the Nebraska case, there was no attempt made by the Supreme Court of the 194
United States to reconstruct, change or modify the law as it was enacted by the legislature. The same thing is true in the Hawaiian case.

You will look in vain to find a decision of the Supreme Court of the United States where that court has ever reconstructed or modified the plain, clear, simple language of a legislative act, for the purpose of holding it constitutional. We frankly concede that, for taxation purposes, the legislature has the power to enact a law requiring that a record of all sales and purchases should be kept in a given language, and to specify
and define how and in what manner such records 195
should be kept, and that such a law would be valid. But we are not dealing with the question of what the legislature can do. The question involved here is what the legislature has done. Both in the title and the body of the act, the legislature has said that it shall be unlawful for any person, firm or corporation engaged in certain lines of business to keep its account books in any language other than English, Spanish or any local dialect, and has expressly imposed a

196 penalty for a violation of the act. There are no exceptions or limitations in the language, and it is not confined or limited to any specific purpose. It is broad and general and applies to any and all account books which may be kept or used in connection with the business.

The majority opinion holds that the law should be construed to read that account books, for taxation purposes only, shall be kept in either English, Spanish or any local dialect. With all due respect to the majority opinion, that is the very highest type of judicial legislation. If the act
197 is to be so construed, then the law itself should specify and define what books are required to be kept, for taxation purposes, and how they should be kept, or it should delegate that power to the tax officials.

Assuming, as the majority opinion does, that Act No. 2972 should read that account books, for taxation purposes, should be kept in either English or any local dialect, the act does not specify or define what books shall be kept or how and in what manner they shall be kept. Neither does it delegate that power to anyone else. In its effort
198 in trying to get out of one hole and make a void law a valid law, the majority opinion runs into another hole, which is equally fatal to the law. If, as it holds, Act No. 2972 should be construed to mean that account books, for taxation purposes only, should be kept in either English, Spanish or some local dialect, and the law does not specify what books shall be kept or how and in what manner they shall be kept, and that power is not delegated to anyone else, how can the law be enforced? Under such a construction, if a defendant should be charged with a viola-

tion of the law, what law has he violated, and upon what legal principle could a conviction be sustained? Upon that point, the law as drafted by the legislature is definite and certain. In legal effect, it provides that all account books for any and all purposes shall be kept in either English, Spanish or some local dialect. The law as reconstructed by the majority opinion would be that such account books are to be confined and limited to account books for taxation purposes. Yet, the law does not specify what books shall be kept for that purpose, or how or in what manner they shall be kept, or what the entries shall contain. Neither is that power delegated. In the absence of such provisions, how could anyone be convicted of a violation of the law? For what crime could he be charged and what would be his offense?

Apparently, the majority opinion realizes the legal effect of its reconstruction of the law, for on page 36, the opinion says:

> "It seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in the books of account or forms subject to inspection for taxation purposes in any other language than either the English or Spanish language or a local dialect."

And on page 37, it says:

> "We would go so far as to hold that circular No. 467 of the Bureau of Internal Revenue which this Court once held beyond the power of the Collector of Internal Revenue to promulgate, and any other reasonable regulation of a similar nature, as within the power of the Phillipine Legislature to sanction and entirely enforceable."

202 But it will be noted that Act. No. 2972 does not say anything about "entries in the books of account or forms subject to inspection for taxation purposes." Neither does it say anything about circular No. 467 or any other reasonable regulation of a similar nature." Neither is there any delegations of power to anyone. Hence, it must follow that until such time as the law is amended by the leglislature covering those points, it cannot be enforced. The act in question is in no way connected with, and does not in any manner refer to, the "Code of Commerce."

203 Act No. 2972 is entitled "An Act to provide in what language account books shall be kept, and to establish penalties for its violation," and Section 1 provides that it shall be unlawful for certain persons "to keep its account books in any language other than English, Spanish or any local dialect." The act is complete within itself and is separate and distinct from, and makes no reference whatever to, any other act.

The Code of Commerce is entitled "Merchants and Commerce in General," and deals with commercial bodies and commercial transactions.

204 If, as the majority opinion holds, Act No. 2972 should read "account books for taxation purposes," then Act No. 2972 should be confined and limited to questions of taxation, which are entirely separate and distinct from "merchants and commerce in general." We have yet to learn that, legally speaking, questions of commerce and commercial transactions are synonymous with questions of taxation.

It is said that this court has never declared an act of the legislature unconstitutional. Assuming that to be true, it is no argument for or against

the constitutionality of any law. On legal principle, Act No. 2972 was declared unconstitutional by the Supreme Court of the United States; an example which it would be well for this court to follow. However grave the responsibility may be, if a given law is unconstitutional, under our oath of office, it is our duty to so declare it. 205

We repeat that no law is cited in the majority opinion and that none will ever be found which holds the law in question to be constitutional. The majority opinion violates every rule above quoted of *Sutherland on Statutory Construction.*

For such reasons, I vigorously dissent. 206

Plaintiffs should have the writ prayed for in their petition.

CHARLES A. JOHNS.

YU CONG ENG, *et al.* v. TRINIDAD, *et al.*
G. R. No. 20479.

STREET, *J.*, dissenting:

The Act which has been assailed in this case looks innocent enough on its face but when examined in connection with conditions among those for whom it was prescribed, compliance is found to be impossible, or supposing that the Act could be complied with, the loss resulting to thousands of Chinese merchants would be so disproportionate to any possible good to be attained that the enforcement of the law would amount to a denial of liberty and equal protection of the law to the persons adversely affected. 207

208 It is unnecessary for me to enlarge upon the destructive effects of the law as a ground for declaring it invalid, for it is admitted in the majority opinion that if Act No. 2972 is taken to mean what it says, it must be considered a dead letter. But after admitting this much, the court, in its extreme reluctance to declare the entire statute void, addresses itself to the problem of limiting its effect by what I consider to be an illegitimate process of judicial amendment under the guise of interpretation. The first section of the Act, as thus amended by the Supreme Court,
209 reads as follows:

> "It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books, (consisting of sales books and other records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue in effect when this action was begun) in any language other than English, Spanish or any local dialect."

210 The new matter which I have here inserted in parenthesis is taken verbatim from the dispositive part of the decision and defines precisely the extent to which the court has decided to allow the Act to operate. Where are the rules of interpretation by which this matter can be deduced from the language of the Act? The opinion of the court supplies no answer. Of course if the Legislature had confined the Act to giving the Collector of Internal Revenue a power to prescribe forms and require data convenient for the

assessment of taxes, the law would not have been 211
subject to criticism; but how can an intention to legislate in this form be deduced from the proposition, so entirely distinct, contained in the Act, that it shall be unlawful for a merchant to keep his account books in other language than those mentioned? That the court is here exercising the mere role of a legislator is very obvious, for who can say that the Philippine Legislature, conscious of the ineffectiveness of the law as written, would have willed that the power granted to the Collector should take the precise form and extent now allowed by the court? In assuming 212
the functions of a legislature we are entering upon a sea that has not been charted for the guidance of courts, and if this decision should prove fruitful as a precedent we shall find ourselves free in the future to wander pretty much at will through legislative Acts.

The precise rule applicable to this case is stated in *Meyer* v. *Nebraska*, 262 U. S., 390, 67 L. ed., 1042, where the Supreme Court of the United States, speaking through Mr. Justice McReynolds, declared that the liberty secured by the constitutional provision under discussion 213
may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.

The decision of the Supreme Court of Hawaii in *King* v. *Lao Kiu*, 7 Hawaiian Rep., 489, declaring invalid a statute almost exactly like that involved in this action is also suggestive, as reflecting judicial sense in a community containing a large element of Chinese population.

214 It is my opinion that Act No. 2972 of the Philippine Legislature is wholly void, and the injunction should have been made perpetual. In addition to smashing the law the court should have removed the debris.

THOS A. STREET.

Exhibit "M."

"Peking
215 "Dated April 28, 1921.
"Rec'd 11:15 a. m.

"Secretary of State,
"Washington, D. C.
"169, April 28, 5 p. m.

"Chinese Foreign Office vigorously protest Philippine's municipal authority requiring all bookkeeping in English, Spanish or Philippine dialect. Commercial attache and Legation fear great indignation aroused by this legislation and that immediate results thereof may prejudice American-Chinese commercial and friendly re-
216 lations. Text by mail.

"CRANE.

"A true copy of record on file in this office.

"J. M. WOOLFOLK
"Assistant Secretary to the Governor-General."

WSB

Exhibit "N." 217

"War Department

"Bureau of Insular Affairs

"Washington, July 14, 1922.

"General Leonard Wood,
"Governor-General of the Philippine Islands,
"Manila P. I.

"My dear General:

"The Legislature has postponed the date on 218
which the bookkeeping law, which was the subject of correspondence last year, is to go into effect. This, however, has not prevented correspondence through the Chinese Legation and through commercial bodies who feel that the law is an imposition on their Chinese customers in the Islands.

"We are of the opinion here that the law is fundamentally unwise. The object of it is apparent, and any reasonable measures to prevent frauds on the revenue collections are not open to criticism. It is felt, however, that frauds may 219
be committed in any language, and while keeping books in Chinese, or other foreign languages, is an inconvenience to the tax collector, this inconvenience is greatly overbalanced by that of the merchant having his books kept in a language which he does not understand. A reciprocal provision in China would meet our serious protest.

"These arguments, of course, are familiar to you, and I am desirous of having you under-

220 stand that the Secretary and those of us who have studied the matter here feel that it would be a great relief if the law were definitely repealed.

"We understand that the law did not originate with Filipinos. It was recommended by an American collector of internal revenue and subsequently by an American Governor-General. This, however, does not prevent the public from looking on it as a Filipino legislative act and as an indication of the sort of act which the Philippine Legislature might enact in dealing
221 with foreigners.

"I believe, therefore, that the Legislature, in order to put itself right, should repeal this act.

"With kind regards, I am,

"A true copy of record
on file in this office.

"Very sincerely,

(Sgd. "FRANK MCINTYRE,
"Chief of Bureau.

"J. M. WOOLFOLK
"Assistant Secretary of the
"Governor-General.

222

"Manila, Aug. 14, 1923."

Exhibit "O."

223

"Executive Form No. 5.

"Cablegram Requiring Action Must Have *Immediate* Attention.

"CABLEGRAM

"RECEIVED

"Office of the Governor-General
of the Philippine Islands
"Manila

"Washington, October 10, 1922. 224

"No. 228.
"Wood,
"Manila.

"Referring to letter from your office August 2d and letter from Bureau of Insular Affairs dated July 14th, bookkeeping law, Secretary of War is strongly of the opinion that legislature should repeal law at coming session as it accomplishes little and is obstructive of good understanding with our neighbors.

"McIntyre. 225

"A true copy of record on file
in this office

J. M. WOOLFOLK,
"*Assistant Secretary to the*
Governor-General.

"Record."

IN THE

Supreme Court of the United States

OCTOBER TERM—1925.

YU CONG ENG AND CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

vs.

W. TRINIDAD, as the Collector of Internal Revenue of the Philippine Islands, EULOGIO P. REVILLA as the Fiscal of the City of Manila and HON. PEDRO CONCEPCION as Judge of the Court of First Instance of the City of Manila,

Respondents.

BRIEF IN SUPPORT OF APPELLANTS' PETITION FOR WRIT OF CERTIORARI.

Statement.

This is a petition for a writ of certiorari to the Supreme Court of the Philippine Islands. Petitioners presented in the court below a petition for a writ of prohibition on behalf of themselves and all Chinese merchants similarly situated against prosecution of criminal actions

under Philippine Act No. 2972, which is fully discussed hereafter. The petition for prohibition was dismissed below and petitioners have presented their petition for a writ of certiorari *in order that this Court may review the determination* of the Court below.

As the facts are set out fully in the petition with appropriate references to the record a brief resumé will suffice here.

Facts.

Petitioners are Chinese merchants, engaged in business in the Philippine Islands. *There are about 12,000 other Chinese merchants similarly situated who transact about 60% of the total business of the Philippines* (Rec. pp. 1-10; 33-35; 7 of Exh. C).

The Philippine Legislature enacted a law (Act No. 2972) providing that no books of account should be kept in languages other than English, Spanish or Filipino.

Petitioners are ignorant of the designated languages; have always kept their account books in Chinese; and would be obliged to abandon business if said law were enforced (Rec. pp. 271; 273; 356-357).

Petitioner Yu Cong Eng has been arrested for violation of the law. The respondent Collector has declared his intention to cause all violations to be prosecuted.

Petitioners and other Chinese merchants have furnished up to the present time all necessary data respecting taxable transactions in the manner required by the Collector. The Collector has experienced no difficulty in securing competent

Chinese accountants to inspect books of Chinese merchants when advisable. The American Secretary of War, the Chinese Foreign Office and numerous trade associations have protested vigorously against this enactment. Its incidence will fall almost exclusively upon the Chinese (Rec. p. 279, etc.).

Petitioners applied to the Supreme Court of the Philippine Islands for a writ of prohibition to enjoin all prosecutions under the Act. The application was denied and the constitutionality of the Act sustained by a divided court, two judges dissenting. The decision was predicated upon a fanciful construction of the law wholly at variance with the plain import of the language of the Act. (Rec., p. ....).

BRIEF OF ARGUMENT.

I.—Act No. 2972 is void as being on its face contrary to the prohibitions of the Philippine Bill of Rights and the Fifth Amendment to the Federal Constitution. It punishes in the petitioners and others similarly situated what is permitted to others as lawful without any distinction of circumstances, to wit, the use of their native tongue in a necessary incident of a legitimate occupation. This is an unjust and illegal discrimination which is made inevitable by this Act.

II.—The Act is also void because it denies to petitioners and others similarly situated the rights, privileges and immunities secured to them by the treaties between the United States and China which secure to Chinese nationals "most favored nation" treatment.

III.—This Court has jurisdiction to determine the validity of the Act untrammeled by the construction thereof adopted by the Philippine Court. That construction is clearly erroneous. It is completely at variance with the plain import of the language of the Act.

ARGUMENT.

I.

(Italics Ours Throughout.)

Act No. 2792 is void on its face as being contrary to the prohibitions of the Philippine Bill of Rights and the Fifth Amendment to the Federal Constitution. It punishes in the petitioners and others similarly situated what is permitted to others as lawful without any distinction of circumstances, to wit, the use of their native tongue in a necessary incident of legitimate business. This is an unjust and illegal discrimination which is made inevitable by the Act.

Act No. 2972 represents an attempt of the Legislature under the guise of a spurious revenue measure to destroy an important class in the community. The inevitable and intended effect of enforcement will be the destruction of all but the largest Chinese merchants.

The Chinese alone of the 85,000 *merchants in the Philippine Islands are affected by the Act, which seeks to deprive them of the right to employ their own language in private commerce.* This constitutes a deprivation of the right to liberty and property guaranteed by the Philippine Bill of Rights, which provides:

> "That no law shall be enacted in said Islands which shall deprive any person of

> life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws." (Sec. 3 of the Philippine Autonomy Act, 1918, Supp. Fed. Stat., Anot., p. 593.)

This is the precise language of the Fifth and Fourteenth Amendments and therefore the decisions of this court and other courts thereunder must be examined for the purpose of determining the validity of Philippine legislation.

> "It is a well settled rule of construction that language used in a statute which has a settled and well-known meaning sanctioned by judicial decision is presumed to be used in that sense by the legislative body. *The Abbotsford*, 98 U. S. 440."
>
> *Kepner* v. *U. S.*, 195 U. S. 100, 124.

See also

> *Diaz* v. *U. S.*, 223 U. S. 442, 455.

(a) The Act on its face creates an illegal classification in that it deprives all but English, Spanish and Filipino speaking inhabitants of the right to employ their native tongues in the pursuit of a legitimate occupation. This Court has recently held in *Meyer* v. *Nebraska*, *infra*, that the right to the free use of language was within the protection of the Constitution.

The Supreme Court of the Hawaiian Islands (*The King* v. *Liau Kiu*, 7 Haw. Rep.) held void an Act couched in almost the identical language of Act No. 2972.

The legislation before that court provided that

> "No wholesale or retail license shall be granted to any person except upon the ex-

> press condition that such licensee shall at all times keep full, true and correct books of account of all business transacted by him in connection with such licensed business, which books of account shall be kept in the English, Hawaiian or some European language."

Defendant in the Hawaiian case was a Chinaman, and was convicted of violation of the statute. The Hawaiian Act purported to be for public welfare and its recited purpose was prosecution of fraud. The Philippine Act does not even don the cloak of the police power. It was decided by the Philippine Court as a fiscal measure and sustained as such.

The Hawaiian Court declared:

> "This legislation is an attempt to impose a restriction and a burden upon the exercise of a lawful employment which borders on tyranny."

And at p. 496, referring to the clause requiring account books to be kept in certain languages,

> "The Legislature cannot, without infringing upon liberty and the rights of property, thus discriminate. *The argument that the Chinese language, which is evidently the one that is sought to be proscribed by this Act is occult and understood by few other than the Chinese themselves, is of no force, for there are European languages that are as little understood in this Kingdom as Chinese, and yet the books of account are by this Act allowed to be kept in them.*"

The Philippine Act permits books to be kept in Filipino, and there are eighty-seven distinct

dialects thereof, many of which are unscientific and little used.

The Hawaiian Court further declared that

> "neither the public safety, health or welfare would be promoted by this legislation, etc., * * *."

In *Meyer* v. *Nebraska*, 262 U. S. 390, this Court, considering a similar attempted limitation upon the use of foreign languages, refused to sustain legislation making it unlawful to teach foreign languages to children. The statute was held to be an invasion of the liberty of foreign language teachers to pursue their occupation as well as that of parents to direct the education of their children.

If States may not exercise the police power to bar the use of foreign languages in schools, *a fortiori*, it is not possible under mere color of a revenue law to prohibit employment of a foreign tongue in purely private business.

Concisely and authoritatively is the principle enunciated by Mr. Justice McReynolds speaking for the Court:

> "The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff-in-error by the 14th Amendment. 'No state * * * shall deprive any person of life, liberty, or property without due process of law.'
>
> While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily re-

straint, but *also the right of the individual to contract, to engage in any of the common occupations of life,* to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. * * * *The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.* Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts. *Lawton* v. *Steele,* 152 U. S. 133, 137, 38 L. ed. 385, 388, 14 Sup. Ct. Rep. 499," (p. 399). * * *

"We are constrained to conclude that the statute as applied is arbitrary, and without reasonable relation to any end within the competency of the state" (p. 403).

It is submitted that the Act in the instant case is far less justifiable than that considered in the *Meyer* case. The former by its express terms and natural operation will drive an entire class of the community from the field of private commerce,—a field in which the police power must surely be exercised with greater circumspection than in the education of children. *Moreover, the Philippine law does not even purport to be an exercise of the police power.*

The justification relied upon by the Philippine Court is that it is a revenue measure, and therefore proper. While the convenience of the tax collector may be a laudable end still it is not

sufficiently so to excuse the destruction of a large mercantile class.

The Act effectually denies to the overwhelming majority of Chinese merchants in the Philippine Islands the right to engage in private business and, therefore, of earning a livelihood. A necessary incident of the right to engage in any commercial occupation is the keeping of books of account. Without proper account books no business of any size can go on. Only the most extraordinary considerations of public welfare should be permitted to justify so violent an invasion of individual liberty.

In determining the invalidity of the Oregon School Law, the Court speaking by Mr. Justice McReynolds, found that,

> "The inevitable practical result of enforcing the Act under consideration would be the destruction of appellee's primary schools and perhaps all other private primary schools for normal children within the State of Oregon."
>
> (*Hill Military Academy et al.* v. *Pierce et al.*, decided June 1, 1925 .... U. S. ....)

As this was held to be an unreasonable interference with appellee's liberty the Act could not stand.

In *Truax* v. *Raich* (239 U. S. 33) and in *Adams* v. *Tanner* (244 U. S. 590) this Court frustrated legislative attempts to arbitrarily interfere with the pursuit of lawful occupations.

The former involved consideration of an Arizona penal statute in the following language:

> "Section 1. Any company, corporation, partnership or individual who is or may

> hereafter become an employer of more than five (5) workers at any one time in the State of Arizona regardless of the kind or class of work or sex of workers, shall employ not less than eighty (80) per cent. qualified electors or native born citizens of the United States or some subdivision thereof."

Plaintiff Raich was neither a qualified elector nor native born. He was employed as a cook by defendant Truax who had in his employ at the time nine workers. Truax informed plaintiff that solely by reason of the requirements of the law he intended to discharge him. Plaintiff thereupon filed a bill in the District Court seeking a decree declaring the law unconstitutional under the Fourteenth Amendment and restraining enforcement thereof.

An interlocutory injunction was granted below and on appeal sustained by this Court.

The Court, by Mr. Justice Hughes, declared p. 37:

> *"The right to earn a livelihood and continue in employment unmolested by efforts to enforce void enactments should similarly be entitled to protection in the absence of adequate remedy at law."*

p. 41:

> "It is sought to justify this act as an exercise of the power of the State to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. *But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful in-*

habitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. Butchers' Union Co. v. Crescent City Co., 111 U. S. 746, 762; Barbier v. Connolly, 113 U. S. 27, 31; Yick Wo v. Hopkins, supra; Allgeyer v. Louisiana, 165 U. S. 578, 589, 590; Coppage v. Kansas, 236 U. S. 1, 14. If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no answer to say, as it is argued, that the act proceeds upon the assumption that 'the employment of aliens unless restrained was a peril to the public welfare.' The discrimination against aliens in the wide range of employments to which the act relates is made an end in itself and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor is necessarily involved. It must also be said that reasonable classification implies action consistent with the legitimate interests of the State, and it will not be disputed that these cannot be so broadly conceived as to bring them into hostility to exclusive Federal power. The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting* v. *United States,* 149 U. S. 698, 713. *The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordin-*

> *ary cases they cannot live where they cannot work.* And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality."

The Philippine Act quite as effectually deprives the Chinese of "the right to earn a livelihood."

The Arizona statute represented an avowed attempt to discriminate against alien labor. Its purpose was frankly revealed in its title. The Philippine Legislature, perhaps mindful of the fate of that statute was careful to camouflage its insidious attack upon the Chinese merchants under the cloak of a revenue measure.

In *Adams* v. *Tanner* (244 U. S. 590) this Court was called upon to determine the validity of a Washington law declaring it "unlawful for any employment agent, his representative, or any other person, to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto."

Appellants employment agents filed a bill to have respondents restrained from undertaking enforcement thereof. The bill was dismissed, and upon appeal to this Court, the judgment below was reversed.

Here again a legislature had attempted under the guise of police regulation to invade the ever-narrowing province reserved to individual liberty

under the Fourteenth Amendment. The Court, however, through Mr. Justice McReynolds, recognized that the statute by its natural operation was "one of prohibition and not regulation" (p. 593).

At p. 592:

> "The bill alleges 'that the employment business consists in securing places for persons desiring to work' and unless permitted to collect fees from those asking assistance to such end the business conducted by appellants cannot succeed and must be abandoned. *We think this conclusion is obviously true.*"

It may be said with equal truth that unless the Chinese merchants are permitted to use their native tongue in keeping their books of account, "their business cannot succeed and must be abandoned."

Against an invasion of liberty inevitably conducive to so disastrous a result it surely cannot be sufficient to set up the mere convenience of the government in collecting taxes. Moreover, it is not established that the government will be materially benefited.

The Court continued at p. 594:

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt,

> some can be found quite ready earnestly to maintain that its suppression would be in the public interest. *Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.*"

Another case wherein a classification was held illegal is *A. T. & S. F. Ry.* v. *Vosburg* (238 U. S. 56). There a statute provided for the assessment of damages upon railroad companies and shippers respectively for delay in furnishing cars, and in loading same. But only the measure of damages assessable upon railroad companies included attorneys' fees. This was held such an illegal discrimination as to amount to denial of equal protection.

In *Coppage* v. *Kansas,* (236 U. S. 1) this Court again halted an attempted restriction upon the liberty of pursuing legitimate callings.

Appellant was sentenced to pay a fine with the alternative of imprisonment for violation of an act declaring it unlawful

> "for any individual or member of any firm or any agent, officer or employee of any company or corporation to coerce, require, demand or influence any person or persons to enter into any agreement, written or verbal, not to join or become or remain a member of any labor organization or association as a condition of such person or persons securing employment or continuing in the employment of such individual, firm or corporation."

Appellant superintendent of railroad company had requested a switchman to sign an agreement to withdraw from a labor union, and at the same time informing him that if he did not sign he could not remain in the employ of the company. The switchman refused to sign and was discharged.

The Court upon these facts reversed the judgment of conviction on the ground that the Act was not a proper exercise of the police power.

> "The mere restriction of liberty or of property rights cannot of itself be denominated 'public welfare' and treated as a legitimate object of the police power; for such restriction is the very thing that is inhibited by the Amendment" (p. 18).

Burns Baking Co. v. *Bryan* (264 U. S. 504) is a recent application of the principle that

> "determination by the legislature of what constitutes proper exercise of the police power is not final or conclusive but is subject to supervision by the courts." (*Meyer* v. *Nebraska, supra*, p. 400.)

In the *Burns* case a Nebraska law prescribed the minimum and maximum weights of loaves of bread to be made or offered for sale in the State. The evidence demonstrated that it was impossible to manufacture good bread in the regular way without frequently exceeding the prescribed maximum weights.

In holding the statute void as imposing restrictions essentially unreasonable and arbitrary in that the provision fixing maximum weights is

not calculated to effect the purpose of protecting purchasers from fraud, the Court declared:

p. 513:

> "But a state may not, under the guise of protecting the public arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable or unnecessary restrictions upon them. Constitutional protection having been invoked it is the duty of the court to determine whether the challenged provision has unreasonable relation to the protection of purchasers of bread against fraud by short weights and really tends to accomplish the purpose for which enacted."

Other cases wherein the courts have refused to sustain state statutes are:

Penn. Coal Co. v. *Mahon*, 260 U. S. 393.
Truax v. *Corrigan*, 257 U. S. 312.
Buchanan v. *Warley*, 245 U. S. 60.
Home Tel. & Tel. Co. v. *City of Los Angeles*, 227 U. S. 278.
In *re Lee Sing*, 43 F. 359.
In *re Jacobs*, 98 N. Y. 98.
In *re Henshaw*, 147 Cal. 649.

In *re Sing, supra*, involved an ordinance of the city of San Francisco which required all Chinese inhabitants to remove from a specified area to another specified area within the city. The Circuit Court for Northern District of California held the ordinance void as discriminating and unequal in its operation, and as an arbitrary confiscation of property without due process of law.

(b) Even though the Philippine Act should not be held to expressly effect an invidious classification still "the purpose of the act must be found in its operation and effect." (*Truax* v. *Raich, supra,* at p. 40). Moreover, in *Yick Wo* v. *Hopkins,* 118 U. S. 356, this Court pierced the veil of ordinances couched in the most general terms and not expressly discriminatory, and ascertained that the ordinances were in their administration

> *"directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted they were applied by the public authorities charged with their administration and thus representing the state itself with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States"* (p. 373).

This Court denied the validity of the ordinances and reversed the judgment of the Supreme Court of California upholding the imprisonment of petitioners under the ordinances.

The Court in the *Coppage* case *supra,* at p. 15, affirmed the duty of the Court to examine *de novo* questions under the Constitution regardless of form or state court construction.

> *"But when a party appeals to this Court for the protection of rights secured to him by the Federal Constitution the decision is not to depend upon the form of the State law nor even upon its declared purpose but*

> *rather upon its operation and effect, and upon these matters this Court cannot in the proper performance of its duty, yield its judgment to that of the State Court.*"

The Court in this as in other cases examined all the facts and circumstances surrounding the controverted legislation to determine if it had any reasonable relation to the public health, safety, morals or general welfare. If there be no such relation, then the legislation is not a proper or reasonable exercise of the police power.

In *Mugler* v. *Kansas*, 123 U. S. 623, 661, Harlan, *J.*, said:

> "The courts are not bound by mere forms nor are they to be misled by mere pretenses. They are at liberty— indeed are under a solemn duty—to look at the substance of things whenever they enter upon an inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the Constitution."

Other decisions where this Court looked back of the form of statute to find illegal classifications are:

Henderson v. *Mayor*, 92 U. S. 268.
Bailey v. *Alabama*, 219 U. S. 219.
Guinn v. *U. S.* 238 U. S. 347.
Penn. Coal Co. v. *Mahon*, 260 U. S. 393.
Ci Ah Chong., 2 Fed. 736.

Surely the Philippine statute, whether or not impartial on its face, must by its natural operation make "unjust and illegal discrimination between persons in similar circumstances, material to their rights * * *." This result seems inevitable when one considers that of the 85,000 merchants in the Philippines, only the Chinese will be affected by operation of the law. In its administration the public authorities cannot but apply it "exclusively against a particular class of persons."

In *Pennsylvania Coal Mining Co., supra,* this Court held void a statute prohibiting mining where there was danger of causing the subsidence of human habitations in a case where the operation of the statute would impair contract rights.

In *Buchanan* v. *Warley, supra,* this Court held void a city ordinance forbidding colored persons to occupy houses in blocks where the greater number of houses were occupied by whites, and *vice versa.*

In *Guinn & Beal* v. *U. S., supra,* this Court declared the unconstitutionality of the so-called Grandfather Clause of the Oklahoma Constitution. This case is another application of the doctrine that the court will not be concluded by the mere form of a state statute or constitution but will consider its necessary operation and effect in determining its validity under the Federal Constitution.

Bailey v. *Alabama, supra,* stands also for the proposition that the court will go back of the form and express language of a statute. There a statute was held void which provided

welfare. (Peters v. Iowa ex. rel. State Treasury, 245 U. S. 170), and Act No. 2972 of the Philippine Legislature having been enacted for reasons of public good and public policy, the legislative judgment in the choice of adequate means to effectuate such a policy cannot be superseded by judicial judgment. (McCullough v. Maryland, 4 Wheat. 316, 421; Purity Extract Co. v. Lynch, 226 U. S. 192; Chicago, Burlington and Quincy Railroad Co. v. McGuire, 290 U. S. 549, 569; German Alliance Ins. Co. v. Kansas, 233 U. S. 389; Green v. Frazier, 253 U. S. 233, 240; La Tourette v. MacMaster, 284 U. S. 465, 468; 6 R. C. L. 195, 199; 210, 211.)

II

1. Courts of justice are empowered to enlarge, restrict or qualify the meaning of words in a statute to carry out the intention of the Legislature (Eureka Case, 4 Sawy, 302, Fed. Cas. No. 4548), and a statute may be construed contrary to its literal meaning when a literal construction would result in absurdity and inconsistency, and the words are susceptible of another construction which carries out the manifest intention. (In re Matthews, 109 Fed. 603, 616–618, quoting with approval paragraph 323 of Statutory Construction by Sutherland.)
3. It is not only the privilege but rather the duty of the court, where a statute is reasonably susceptible of two interpretations, by one of which it would be clearly constitutional and by the other its constitutionality would be doubtful to adopt the former construction. (Harriman v. Interstate Commerce Commission, 211 U. S. 407, 422; Knights Templars' Indemnity Co. v. Jarman, 187 U. S. 107, 205.)

III

1. The Supreme Court of the United States cannot review and revise the construction affixed to a state's statute as to a state matter by the court of last resorrt of the state. (Comm. Bank v. Buckingham, 5 How. 317, 342; Johnson v. New York Life Ins. Co. 187 U. S. 491, 496; Ross v. Oregon 227 U. S. 160, 162; Iowa v. Woods, 246 U. S. 491, 496; Stadelman v. Minor, 246 U. S. 544; Erie Railroad Co. v. Hamilton, 248 U. S. 369, 371, 372.)

2. In dealing with the constitutionality of state's statute challenged under the Fourteenth Amendment, the Supreme Court of the United States accepts the meaning thereof as construed by the highest court of the state. (St. Louis and Kansas City Land & Co. v. Kansas City, 341 U. S. 419, 427.)

IV

Act No. 2972 dealing, as it does, with bookkeeping, is a local law and being such, the power to legislate on said matter is not among those surrendered by the states to the Federal Government, and cannot be affected by any treaty between the United States and China. (Patstone v. Pennsylvania, 232 U. S. 138; Heim v. McCall, 239 U. S. 175; Puget Sound Agri. Co. v. Pierce County, 1 Wash. Terr. 159.)

ARGUMENT

I

ACT No. 2972 IS NOT UNCONSTITUTIONAL

1. Books of account are the only means which are at the disposal of the Government to ascertain the amount of taxes to be exacted from merchants. Said books, therefore, partake of the nature of, and should be considered for taxation purposes as, public records. Being such, the same can lawfully be required by the Legislature to be kept in languages known to the Government and its officers and employees. Otherwise, the Government would be, as it is now in fact, at the mercy of such foreign merchants as use in their books of account languages unknown to it, and must needs collect from them only such amount of taxes as they may care to pay, not the exact proportion of their income as fixed by law.

The evident and undeniable purpose of the Act being to protect the Government revenue, businessmen's books of account should be considered as proper subject of governmental regulation. As Mr. Justice McKenna

put it in German Alliance Ins. Co. v. Kansas, 233 U. S. 389, 411:

> A business, by circumstances and its nature, may rise from private to be of public concern and be subject, in consequence, to governmental regulation.

In Fed. Cas. No. 15, 735 (United States v. Mason et al., 26 Fed. 1189), Judge Blodgett said:

> The first question presented is: Has the government the right to take charge of the private business of individuals of *any* character *for the purpose of revenue*, and exercise the control over that business, determine the manner in which the manufacturer shall manufacture, the time wherein he shall work, the manner in which he shall store or keep the article manufactured, and in fact, oversee and regulate his entire business?
>
> Revenue laws of this character are not new to this government. They were adopted at an early date, and have been rigidly enforced, and no question has been seriously raised as to the right of the government under the powers granted in the constitution, to exercise this kind of surveillance and control over certain classes of business. The same power has been assumed and exercised by other governments, from whom, to some extent, this government copied and derived its forms for raising revenue, and we find that the English Government had assumed, long prior to the Revolution and to the Declaration of Independence by the American colonies, the control of the manufacture of spirits within its realm, as well as the manufacture and *sale of various other commodities;* * * *
>
> And it seems to me very clear that when you accept the proposition that the Government assumes this absolute control of the business of the distiller, and this surveillance over the manner in which the business is carried on, it follows almost as a necessary conclusion from the first proposition that the Government has the right to examine any books which the distiller or rectifier may keep pertaining to his business as a distiller, or a rectifier, or a compounder, which will tend to establish either the verity or want of verity of these books; that *for the purpose of the Government every book which a distiller keeps is to a certain extent a Government book;* that *he cannot claim that any book in which he makes an entry per-*

taining to his distillery business is his private book. It belongs to the Government.

We believe that distilleries should not be told from other mercantile business when it comes to regulate them for revenue purposes.

2. Bookkeeping, on account of its public or quasi-public character, may be said to be affected by a public interest in the sense that the Government interest, which is, after all, identified with that of the general public—inasmuch as the proceeds of taxes become public money to be devoted to the conduct of public affairs for the public good—makes it imperative for the Government to know the contents of such books by means that it may deem proper for the protection of its revenue. It is well settled that things, like bookkeeping in this case, clothed with a public interest can lawfully be regulated and interfered with by the Government under its sovereign powers. (German Alliance Ins. Co., *supra;* Clark v. Nash, 198 U. S. 361; Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527; Noble State Bank v. Haskell, 219 U. S. 104; Pierce Oil Corp. v. Hope, 248 U. S. 498; La Tourette v. McMaster, 248 U. S. 465; Block v. Hirsh, 256 U. S. 135.)

3. That bookkeeping is a matter affected by a public interest under the Philippine Code of Commerce is made apparent by the very provisions thereof. Undoubtedly, Act No. 2972 refers to said code, among other laws, in mentioning persons, companies, partnerships, and corporations *engaged in commerce, industry,* or any other profitable activity, *"in accordance with existing law."* Now, merchants are required by the Code of Commerce to keep certain specified books of account which must be legalized by justices of the peace, as shown by its following provisions:

ART. 33. Merchants shall necessarily keep:

1. A book of inventories and balances.

2. A journal.
3. A ledger.
4. A copying book for letters and telegrams.
5. The other books required by special laws.

Associations and companies shall also keep a book or books of minutes, in which there shall be entered all the resolutions which refer to the progress and business transactions adopted at the general meetings and at those of boards of directors.

ART. 34. They may furthermore keep other books that they consider advisable according to the system of bookkeeping adopted.

Such books shall not be subject to the provisions of article 36, but any books which may be considered proper may be legalized.

ART. 35. Merchants may keep their books in person or have them kept by a person whom they authorize for the purpose.

If the merchant does not personally keep his books, it shall be presumed that authority has been granted to the person who does keep them, unless there is proof to the contrary.

ART. 36. Merchants shall present the books referred to in article 33 bound, ruled, and folioed, to the justice of the peace of the municipality where they have their commercial establishments, in order that he may put on the first page of each one a signed memorandum of the number of pages contained in the book.

The seal of the justice of the peace which authenticates them shall, moreover, be stamped on all the sheets of each book.

The code further gives detailed instructions as to the manner of keeping, and making entries upon, books of account in article 37 *et seq.* It also requires that—

ART. 49. Merchants and their heirs or successors shall preserve the books, telegrams, and correspondence of their business in general for the entire period which it may continue in existence, and until five years after the liquidation of all their commercial transactions and business.

In the explanatory note to the Spanish Code of Commerce of 1885, which has been extended to the Islands with certain modifications made necessary by local con-

ditions by a Royal Decree of August, 1888, the sponsor of the bill, the Minister, Sr. Alonso Martinez, said in reference to account books and accounting:

Taking into account that books of commerce constitute one of the principal means of proof in mercantile matters, since in entering a transaction in his books a merchant becomes the attorney in fact of the other contracting party, and the book reciting such transaction is a title common to both parties, and taking further into account the propriety of harmonizing the new methods adopted by commerce in keeping books with the existing law, which in some points is defective and even unjust, the bill has made reformations of great utility in this important matter.

The first of them is that imposing on mercantile associations and companies the duty of keeping necessarily, besides the ordinary books of merchants, and those required by special laws, another book called the Book of Minutes whereupon there will be spread verbatim all such resolutions adopted under proper authority at general meetings or by the councils of administration of said companies as refer to corporate transactions and business. While well administered associations generally use to keep minute books, entries and resolutions therein entered lack the probative force attached by the Code to other commercial books, although they deserve it as well as the latter, and their importance is even greater in view of the fact that large interests may be affected by the resolutions adopted. To fill in this gap the bill requires for minute books which will hereafter be kept by companies the same external formalities and requirements as are required for other commercial books, whereby they will obtain the same evidenciary force as the latter when kept in accordance with legal requirements.

The bill also maintains the right now enjoyed by merchants to keep, besides those books which may be considered necessary or fundamental, such other books as they may deem proper, according to the greater or smaller complexity of their business and the bookkeeping system adopted by them, but such books which ought to be only a reflection or amplification of the necessary ones will not be subject to the formalities and

requirements of these latter books, nor will they have the effect ascribed to the same by the bill, it being, however, discretionary for merchants and partnerships to legalize such additional books as they may choose which, once so legalized, will produce the same effects.

The duty to keep account books reaches all merchants, even though they cannot write, and to this effect and to avoid any pretext and expenditure, the bill raises to the category of a legal presumption what is common and constant in the daily practice, that is, that whenever a merchant does not himself keep his books, it will be presumed that authority has been conferred upon the person who is actually keeping the same unless the contrary is shown.

For the compliance with this duty the Code now in force imposes two different sanctions, one of a penal character consisting in the payment of a fine, and the other of a civil nature only which affects a merchant in case of litigation with another merchant, or of being declared bankrupt. The bill omits the former as oppressive to commerce and preserves the latter which is a sufficient guaranty for the faithful compliance with a precept so essential to all merchants who are concerned more than anybody else with deserving the reputation always accorded to a person who proceeds regularly and accurately in all his acts and transactions.

Further, in order that the letter-copying book may be kept with the rapidity allowed by modern inventions and be completed by the new method of communication due to electricity, article 58 of the present Code has been suppressed. According to this article, letters shall be copied without leaving blanks or intervening blank spaces. By the suppression of this article there is sanctioned the tacit repeal thereof by the practice which has long ago admitted the use of mechanical copying devices. The bill also provides that telegraphic dispatches issued by a merchant in the course of his business be also wholly transcribed in the copying book.

Books of account being so important, the bill could not but adopt the external formalities and requirements provided by the Code in force in order to secure the authenticity of said books, and its doctrine has for this reason been substantially reproduced, although it has been modified in certain particulars, as, for example, in the manner of correcting errors

and omissions in order to remedy any defect or irregularity that may attract suspicion to the veracity of the contents of their entries.

And keeping in mind that the purpose of mercantile accounting is to resume all business transactions so that their details being recorded with the greatest possible accuracy, the general results appear at a glance, the bill likewise reproduces the Code's doctrine as to the manner of keeping the book of inventories and balances, the daybook, and the ledger, completing the same with some rules tending to facilitate compliance with the existing provisions, to maintain due order in the writing of entries, to secure exactness of their contents, and to attain the most perfect conformity among those related to the same transaction entered in several books, all of which rules are founded on good commercial practice and the results of experience.

In respect of the authority to be granted to book entries, the bill, while substantially adopting the doctrine of the Code, makes important changes in articles 42 and 45 thereof. To such an end it takes into consideration that article 42 gives an excessive faith to books regularly kept if in opposition to other which is defective or irregular, the latter being deprived of any legal value. This is unjust inasmuch as external regularity consisting in books being sealed and signed by the judicial authority and written neatly and accurately does not exclude lack of exactness or falsity in the entries' contents. The bill has further taken into consideration that article 45 imposes a very severe penalty on a merchant who does not keep any of the books prescribed by the Code, because he who does not like or is unable to produce account books will indeed find himself in an unfavorable condition before his adversary, but such a condition is not enough to attach an absolute faith to the latter's books. The injustice of the present Code becomes much more apparent if account is taken of the fact that it makes no distinction between a merchant who acts in good faith and one who proceeds in bad faith, between one who keeps no books at all for reasons independent from his own will and he who does not exhibit any purposely or because he neglects to keep any, rendering them all equal as though they have violated the law in the same manner.

Such grave defects are remedied by the provisions to this effect contained in the bill. According to them, a merchant who shall not keep his books in due form, or who shall not present any books on account of his own negligence shall be adjudged in a litigation with another merchant in conformity to the latter's books, to which full credit shall be given, if duly kept, so far as nothing to the contrary be shown by any competent evidence. If a merchant cannot present account books for reasons other than his own negligence, and also when in the books presented by both parties there are contradictory entries upon the point in issue the court shall determine it according to the rules of evidence.

As is seen, the framers of the Spanish Code of Commerce, in providing so minutely for the manner in which books of account shall be kept by merchants, had in view their evidenciary nature and the protection of the mercantile class and the general public, considering said books the same as deeds and other public documents in which public faith is reposed. To add to such regulations others concerning the languages in which they shall be written, as the Philippine Legislature did by Act No. 2972, seems to fall within the scope of said regulations.

4. To the Spanish legislator such a requirement was altogether useless. The Spanish Code of Commerce was adopted for Spaniards and Spanish subjects, and there was no need to expressly require that books of account be kept in the Spanish language. That went without saying. As for foreign merchants doing business within the Philippine territory our Code provides:

ART. 15. Foreigners and companies created in a foreign country may engage in commerce in the Philippine Islands, subject to the laws of their country in so far as their capacity to contract is concerned; and in all that refers to the creation of their establishments within the Philippine territory, *their commercial transactions*, and the jurisdiction of the courts of this country, the provisions of this Code govern.

So, before the enactment of Act No. 2972, foreign merchants were virtually required to keep their books of account in the Spanish language, because they were subject in their commercial transactions to the provisions of a code designed for Spanish subjects and containing no express exception in favor of foreigners as to the use of their native languages in their account books.

Moreover, according to the Spanish legal tradition, books of account must be written in the Spanish language, and this is a further explanation of the silence of the present Code of Commerce as regards the use of the Spanish language in account books. There is in the *Novísima Recopilación* the following provisions:

> All banks and public exchanges and merchants and any other persons, whether natives or foreigners, who trade within or without these kingdoms are required to have and record their accounts *in the Castilian language* in their cash and day books by debit and credit, in the order in which they are kept by the natives of our kingdoms; they shall record the money received and paid, declare in what coin the same is received and paid, to which persons, giving their residences, so that by means of such books they may give account of how and in what money they have paid for merchandise brought from foreign kingdoms, and at which rates they have fixed the exchanges made by them to take effect without these kingdoms; and such books shall not be turned over or sent to their principals or partners in their original form but a translation of the same, in order that when they are required to render account they may be able to do so; and said foreign merchants shall keep all their account books, whether of memories or of fairs, or of any kind whatsoever relative to business, *in the Castilian tongue.*[1]

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[1] Todos los bancos y cambios públicos y los mercaderes y otras cualesquier personas, ansi naturales como extranjeros, que trataren ansi fuera de estos reynos como en ellos, sean obligados a tener y asentar la cuenta *en lengua castellana* en sus libros de caxa y manual, por debe y ha de haber, por la orden que los tienen los naturales de nuestros reynos; asentando el dinero que recibieren y pagaren, declarando en que moneda lo reciben y pagan, y a que personas, y donde

All merchants and traders doing wholesale or retail business in these my kingdoms and seigniories, be they natives or aliens, shall keep and have their books *in the Castilian language.*[2]

Article 54 of the Spanish Code of Commerce approved May 30, 1829, provided:

ART. 54. Books of commerce shall be kept in the Spanish language. Any merchant who shall keep them in other language, whether foreign or a Spanish dialect of any province of the kingdom, shall be punished by a fine not less than one thousand "reales" and not more than six thousand; a translation shall be made into Spanish at his expense of the entries of the book ordered revised and verified, and he shall be compelled by the legal means to translate into Spanish, in a term which shall be fixed, the books kept by him in other language.

Commenting on the above article, the Spanish author Estasen says:

Neither was the provision contained in article 54 of the old Code relative to the keeping of books of commerce in the Spanish language anything new in our laws, although the old ones provided that such books be kept in the Castilian language, and the Code of Commerce, in saying "Spanish language," might cause the Basques to keep their books in Basque, and the Catalans in Catalan, believing the same to be Spanish language and that thus they are complying with the law, whereas the idea of the law-framer was that such

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son vecinos, para que por los dichos libros puedan dar cuenta de como y en que han pagado las mercaderias que traxeren de reynos extraños, y a como han proveido el valor de los cambios que hobieren hecho para fuera de estos reynos, y que los tales libros no se puedan entregar ni enviar originalmente a sus compañeros ni mayores, sino el traslado de ellos, para que cuando les fuere pedida cuenta puedan dar; y que los dichos mercaderes extranjeros tengan los libros todos que sean de sus cuentas, asi de memorias como de ferias, como de otras cualesquiera condición que sean, que tocaren a negocios, *en lengua castellana.* (*Ley 12, tit. 4.° Lib IX, Nov. Recop.*)

[2] Todos los mercaderes y comerciantes de por mayor y menor de estos mis reynos y señorios, sean naturales o extranjeros, lleven y tengan sus libros *en idioma castellano.* (*Ley 13, tit. 4.°, Lib. IX Nov. Recop.*)

books be written in the Spanish (Castilian) language. (*Estasén, Instituciones de Derecho Mercantil, Vol. 2, p. 126.*)

Evidence to the effect that the Spanish Code of Commerce implicitly requires that books of account be kept by merchants in the Spanish language is furnished by many Latin-American republics, which, while greatly influenced in framing up their political organizations by the Constitution of the United States (*Decision, at p. 1183, Transcript of Record*), thought it fit to retain all or most of the substantive laws of their mother country. The provisions of the codes of commerce of the aforementioned South-American countries contained in Exhibits 12 (*a*) to 12 (*e*) (*pp. 1038–1054, Transcript of Record*) show that their legislatures understood that the borrowed Spanish Code of Commerce requires tacitly that books of account be kept in the Spanish language, and to avoid probably any misunderstanding in the matter, they inserted express provisions to the effect in their codes of commerce, substantially adopting the wording of the above-quoted article 54 of the Spanish Code of Commerce of 1829.

However it may be, the policy adopted by such enlightened nations as Bolivia, Chile, Colombia, Ecuador, Guatemala, Honduras, Mexico, Salvador, Uruguay, and Venezuela in the American continent, and by France and Servia in Europe, in regard to the use of national languages in merchants' books of account, may at least justify the action taken by the Philippine Legislature in the matter. In Muller v. Oregon, 208 U. S. 412, 420–421, this Court, speaking through Mr. Justice Brewer, accorded to foreign legislation due weight in the following language:

> The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to

us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge.

In Block v. Hirsh, 256 U. S. 135, 158, Mr. Justice Holmes said:

> Assuming that the end in view otherwise justified the means adopted by Congress, we have no concern of course with the question whether those means were the wisest, whether they may not cost more than they come to, or will effect the result desired. It is enough that we are not warranted in saying that legislation that has been resorted to for the same purpose all over the world, is futile or has no reasonable relation to the relief sought. (*Chicago, Burlington & Quincy R. R. Co. v. McGuire, 219 U. S. 549, 569.*)

From the foregoing it may therefore be concluded that since the Code of Commerce in force in the Philippines virtually requires that books of account be kept in the Spanish language, Act No. 2972 may be considered as a mere amendment to such implicit requirement in the sense that because the English language and native dialects, together with the Spanish, have been accorded official recognizance, books of account ought to be written in all those languages and dialects. We submit that inasmuch as the Philippine Code of Commerce together with other codes of Spanish origin in force in these Islands have been tacitly approved by Congress,

any taint of unconstitutionality in Act No. 2972 is removed by the doctrine laid down by this Court in Public Utility Commissioners v. Ynchausti & Co., 251 U. S. 401.

Petitioners assert, however, that Act No. 2972 is an attempt to destroy an important class in the community, since the 12,000 Chinese merchants in the Philippine Islands can not afford to use but their own language in their books of account. This allegation is not borne out by the facts proven in the present case. It appears from the evidence, and so found by the lower court, that two-thirds of said Chinese merchants are able to keep their books of account in either English or Spanish. The remaining 4,000 Chinese were given two years in which to prepare themselves for the new situation created by the law. It is also a fact that practically all of the Chinese merchants do comply with the requirement of the Bureau of Internal Revenue to keep sales books, and for those of said 4,000 Chinese merchants who have not to pay the income tax, such sales books are sufficient to comply with the law. And it should also be borne in mind that not all of the said 4,000 Chinese merchants must keep account books since not all of them have to pay the percentage tax.

Section 1459 of the Administrative Code provides:

SEC. 1459. *Percentage tax on merchants' sales.*—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, * * *

The following shall be exempt from this tax:

(*a*) Persons engaged in public market places in the sale of food products at retail, and other small merchants whose gross quarterly sales do not exceed two hundred pesos.

(*b*) Peddlers and sellers at fixed stands of fruit, produce, and food, raw or otherwise, the total selling value whereof

does not exceed three pesos per day and who do not renew their stock oftener than once every twenty-four hours.

(*c*) Producers of commodities of all classes working in their own homes, consisting of parents and children living as one family, when the value of each day's production by each person capable of working is not in excess of one peso.

The other allegation of petitioners is that Act No. 2972 seeks to deprive Chinese merchants from their right to use their own language in private commerce. Nowhere in Act No. 2972 is there any provision prohibiting the use of foreign language in private business. The scope of the Act is restricted to bookkeeping; it does not cover the whole field of business transactions. Needless to say, the business of foreign merchants is not to keep books of account only; this is a mere incident to their real business. They can, as heretofore, transact business in any language they may choose; they are only required to keep a record of their business in the languages or dialects mentioned in the Act. Chinese merchants are not discriminated against on account of their nationality; all foreign and native merchants are equally treated by the Act.

Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the (fourteenth) amendment. (Barbier v. Connolly, 113 U. S. 27, 32.)

There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. (Middleton v. Texas Power and Light Co., 249 U. S. 152.)

The Fourteenth Amendment is not a pedagogical requirement of the impracticable. The equal protection of the laws does not mean that all occupations that are called by the same name must be treated in the same way. The power of the

State "may be determined by degrees of evil or exercised in cases where detriment is specially experienced." *Armour & Co.* v. *North Dakota, 240 U. S. 510, 517.* (Dominion Hotel v. Arizona, 249 U. S. 265, 268.)

The same view was adopted by the Philippine Supreme Court in Kwong Sing v. City of Manila, 41 Phil., 103.

The Philippine Legislature, in approving Act No. 2972, did not choice, among the various languages spoken the world over, the English and Spanish languages and the Philippine dialects but simply adopted these languages and dialects for a fiscal measure because they are the official ones and known, therefore, to the Government officers and employees. It was not its aim to favor certain foreigners to the detriment of others, and the coincidence of the official languages with those spoken by some foreign residents is an unavoidable fact antedating the adoption of Act No. 2972, and which no power on the earth can either remedy or change.

There is no question but that aliens in foreign territory are at liberty to use their own languages in private business, but, as aforesaid, bookkeeping is not only a private business. Bookkeeping is also a matter of public concern. Neither the Federal Constitution nor the Philippine Bill of Rights guarantees to any foreigner the untrammeled use of his native language in bookkeeping, nor has Congress ever expressed in its enactments any intention to legislate upon local matters such as bookkeeping.

In an air of triumph, petitioners cite the cases of Meyer v. Nebraska, 262 U. S. 390, and The King v. Liau Kiu, 7 Hawaii, 498. The application of these cases to the present one is very doubtful. In the case of Nebraska, as is known, teachers of foreign languages were deprived of their constitutional right to engage in a lawful occupation such as the teaching of foreign lan-

guages. The right of school children to acquire useful knowledge, and that of their parents to bring them up and give them education suitable to their station in life were also denied by the Act in question in the Nebraska case. No similar deprivation of rights is attempted by Act No. 2972. This Act does not deprive the petitioners of their right to engage in commerce and trade; it only requires that their native language be not used in their books of account since these books are also books of the Government which by virtue of its sovereign powers and of its paramount right to depend upon taxation for its life may dictate to merchants in what language such books are to be kept. If any persons could complain of Act No. 2972, they are the Chinese bookkeepers. But no Chinese bookkeeper is among the petitioners, and, on the other hand, even with Act No. 2972 Chinese bookkeepers may, as heretofore, engage in their occupation. Far from depriving any person of any constitutional right, Act No. 2972 indirectly fosters the knowledge of useful languages such as the English and Spanish, to say nothing of local dialects so useful to a large number of Chinese merchants who are the distributors of American and foreign products among the native population.

As to the Hawaiian case, it will be remembered that the purpose of the law which was the subject of the decision in that case was, as set forth in its preamble, "to prevent the future perpetration of frauds," that is, to protect creditors. Act No. 2972 is a fiscal measure purporting to insure uniformity, facility, and exactness in the collection of merchants' taxes. While the Hawaiian law could not have prevented fraud against private creditors since, as the court rightly said, fraud may be committed in any language, by Act No. 2972 any fraud against the Government revenue can be easily detected. Moreover, the Hawaiian law was

pronounced unconstitutional because it in fact deprived wholesale and retail merchants of their right to engage in business since license to do so could be denied or revoked should the condition that the licensee keep his books of account in English, Hawaiian, or some European language be not accepted or complied with. Act No. 2972 imposes no condition on merchants in the pursuance of their business. Foreign and other merchants are free to keep or not to keep any account books. Even though the Code of Commerce requires that certain books be necessarily kept, a merchant who does not keep any book at all cannot be criminally prosecuted. (*Decision of the Supreme Court of Spain of February 10, 1879.*) Furthermore, nothing prevents a foreign merchant to keep books of account in his native language in addition to those required by Act No. 2972 to be kept in the official languages and Philippine dialects, for there is no prohibition to the effect in the Act, and article 34 of the Code of Commerce expressly authorizes the keeping of other books besides those mentioned in its article 33. After all, as shown by the evidence in this case, all the Chinese and other foreign merchants are able to keep the sales books required by the Bureau of Internal Revenue, which books, as stated in Young v. Rafferty, *supra*, are simplicity itself. If merchants cannot afford to conduct their business without books of account, such Chinese and other foreign merchants as are not exempted by section 1459 of the Administrative Code from the percentage tax may well keep books in their native language together with the aforesaid sales books and thus comply with the law without any detriment to their business.

Other cases are cited and commented upon by the petitioners. All of them are, in our opinion, inapplicable to the case at bar. In the case of Pierce v. So-

ciety of Holy Names (17 Adv. Op., October Term, 1924, p. 688) children of school age were prohibited to attend private schools thus interfering with the constitutional right of their parents and guardians "to direct the upbringing and education of children under their control," and destroying the business of owners of private schools. The use of his native language by a foreign merchant in his account books is not among the rights which cannot be deprived without infringing upon the Constitution. The Government by its police and taxing power, as aforesaid, can lawfully prohibit the use of foreign languages in bookkeeping which is a matter affected by a public interest.

Truax v. Raich, 239 U. S. 33, is a case entirely different from the present. In that case foreign workers were deprived of their means to earn a livelihood merely because of their race or nationality. Act No. 2972 does not deprive foreign merchants of their right earning a livelihood for any reason whatever. That is an exaggeration of the effect and operation of the Act. The requirement that a language unknown to some of the 4,000 Chinese merchants who cannot understand bookkeeping in such language is likely to cause some initial embarrassment, for which they are to blame since they were given a term of two years for adjusting themselves to the new conditions, but would not drive them altogether out of business. It is significant in this connection that while in the beginning such would be the probable result of the Act upon a relatively small group of Chinese merchants, other foreign merchants similarly situated, as, for example, Japanese and Hindu owners of small godowns and retail stores, have not complained of the Act.

Adams v. Tanner, 244 U. S. 590, is also a different case. The subject of said case was a prohibition to employment agents from requiring a charge from per-

sons seeking for employment. The right to collect a charge for service rendered is of course one which cannot be denied. Without a demand for remuneration employment agencies could not succeed and must be abandoned. And requiring a Chinese merchant to keep his books of account in a language unknown to him might force him to abandon his business. But such is not the situation of any Chinese merchant in the Philippines. According to the very testimony of the Chinese witnesses in this case, Chinese merchants have been residing in the Islands for many years, and it is odds that they cannot generally understand foreign bookkeeping. At any rate, those who are affected by the Act, not exceeding 4,000 in number, are all able to keep the sales books required by the Bureau of Internal Revenue, and furthermore small retail shops do not necessarily require the service of a bookkeeper.

Atchison & State Railway v. Vosburg, 238 U. S. 56, was a case where a state statute imposed reciprocal burdens on both carrier and shipper, and provided that "in case of delinquency on the part of the carrier the carrier may recover an attorney fee but in the case of delinquency on the part of the shipper, it did not provide that the carrier might recover an attorney fee." This was certainly an unreasonable classification which denied carriers the equal protection of the law. But by Act No. 2972 all merchants, whether natives or foreigners, are required to keep their books of account in English, Spanish, or a native dialect. No classification is made of foreign merchants, and the fact that there are foreign merchants having for their own languages those mentioned in the Act is an advantage for them but does not constitute the basis of any classification.

In Coppage v. Kansas, 236 U. S. 1, a statute declared it to be a misdemeanor for an employer to require an

employee to agree not to become or remain a member of any labor organization during the time of his employment. Upon the facts of the case, the court held that such statute was repugnant to the due process of law. No similar requirement is to be found in Act No. 2972. In that case, Mr. Justice Pitney, speaking for the Court, said:

> But, in our opinion, the Fourteenth Amendment debars the States from striking down personal liberty and property rights, or materially restricting their normal exercise, *excepting so far as may be incidentally necessary for the accomplishment of some other and paramount object, and one that concerns the public welfare.*

In Burns Baking Co. v. Bryan, 264 U. S. 504, the Court ruled that the minimum and maximum weights of loaves of bread to be made or offered for sale was an unreasonable and arbitrary interference with private business, and in fixing maximum weights was not calculated to protect purchasers from fraud. Act No. 2972 is, however, a necessary interference with private business in one of its aspects, the keeping of books of account. Requiring that such books be kept in the languages mentioned in the Act is neither unreasonable nor arbitrary for they are the only languages known to the Government, and it can be generally complied by foreign merchants, although it would prove a burden to a few Chinese merchants. That the private convenience of a small portion of the community must yield to governmental convenience in the all-important question of the latter's subsistence is a self-evident proposition.

The case of Lee Sing, 43 Fed. 359, is another case which cannot be compared with the case at bar. In that case, an ordinance of the City of San Francisco arbitrarily required all Chinese inhabitants to remove from an area to another. That was evidently a deprivation of the liberty of those Chinese to dwell where they might

please within the city. In the present case, however, the deprivation of the use of foreign languages in merchants' books of account is made necessary for the protection of the Government itself against frauds and evasions in the payment of taxes in which it is vitally concerned.

In Yick Woo v. Hopkins, 118 U. S. 356, an ordinance conferred upon the municipal authorities the power, at their own will, to grant or deny licenses for public laundries, without regard to the competency of the applicant or the propriety of the place selected. It was also found in that case that the ordinance was applied by said authorities by making arbitrary and unjust discriminations founded on differences of race between persons otherwise in similar circumstances. The subject of the present case is not the application of Act No. 2972 by the executive officers, and the Act is applicable to all merchants, whether Chinese or not.

In Mugler v. Kansas, 123 U. S. 623, this Court said that "courts are not bound by mere forms, nor are they to be misled by mere pretences" (p. 661), but are at liberty to look at the substance of things in inquiring whether the legislature has transcended the limits of its authority. But the form, substance, and purpose of Act No. 2972 are nothing more nor less than to protect and facilitate the collection of Government revenues. It is not intended for the Chinese only, although they constitute the larger portion of the business community. A Japanese, a German, an Italian, a Syrian merchant who violates its provisions is as amenable to prosecution as a Chinese violator thereof. To see beyond the plain language of the Act an occult design against Chinese merchants is but an unfounded suspicion. That the Legislature in the exercise of its constitutional powers was justified in approving Act No. 2972 is shown by the

following quotations from the License Cases (5 How. 504) made in the Mugler case at page 658:

Mr. Justice McLean, among other things, said: "A State *regulates its domestic commerce*, contracts, the transmission of estates, real and personal, and *acts upon all internal matters which relates to its* moral and *political welfare. Over these subjects the Federal Government has no power* . . . The acknowledged police power of a State extends often to the destruction of property. A nuisance may be abated. Everything prejudicial to the health or morals of a city may be removed." (Pp. 588, 589.) Mr. Justice Woodbury observed: "How can they (the States) be sovereign within their respective spheres, without power to regulate *all their internal commerce*, as well as police, and direct how, when, and where it shall be conducted in articles intimately connected either with public morals, or public safety, or the public prosperity?" (p. 628).

In Pennsylvania Coal Mining Co. v. Mahon, 260 U. S. 393, this Court held that a statute prohibiting mining under certain circumstances would impair contract rights. In the present case there is not even an intimation that Act No. 2972 would impair contract rights.

In Buchanan v. Warley, 245 U. S. 60, an ordinance was held unconstitutional which forbade colored persons to occupy houses in blocks where the greater number of houses were occupied by white persons. Certainly, the ordinance discriminated against colored people on account of their race. But Act No. 2972 is not aimed at Chinese only and on account of their race. The fact that the English, Spanish, and native dialects are spoken by the majority of the inhabitants of the Islands was not the basis for their adoption as the languages to be used in books of account, as aforesaid.

Guinn & Beal v. United States, 238 U. S. 347, was a case in which an amendment to the Constitution of Oklahoma was declared void because it violated the Fifth Amendment to the United States Constitution.

Reasoning out his conclusions, Chief Justice White incidentally said that a mere form of expression must not prevail over the operation and effect of a statute which in substance denied a negro voter his right of suffrage. In Act No. 2972 no constitutional rights will be infringed on account of the race of the offender because, as repeatedly said, it covers all merchants. If because it may happen that in a community a certain mass of foreigners is more numerous than others, the legislative power could not legislate upon a matter which concerns the government, simply because the burden to be imposed will fall mainly upon the shoulders of said greater number of foreigners, or because it may be suspected to discriminate against the same, then a privileged intangible class will be constituted by said foreigners, and any measure restricting their activities for the protection of the government itself must be held unconstitutional. A community in which foreigners would have such a privilege and could prevail over the government could not be said to be governed by principles of reason and justice.

In Bailey v. Alabama, 219 U. S. 219, this Court held that, even without an apparent motive to oppress, a statute which in its operation brings about such a result should be held void. Much has been exaggerated in the case of the Chinese merchants in connection with the operation of Act No. 2972. As aforesaid, the testimony shows that two-thirds of said Chinese merchants can easily comply with the Act. Of the remaining one-third, all can keep the sales books required by the Bureau of Internal Revenue, which is enough for a proper compliance with the law. As the lower court aptly said:

> The law will prove oppressive to the extent that all tax laws are oppressive, but not oppressive to the extent of confiscation. The means to accomplish a necessary interference with private business are no more oppressive upon individuals than is ne-

cessary to maintain the State. The law is not intended for the creditors, but has relation to the public welfare, to the power of taxation, to the right of the Government to exist. The Chinese must bear their just proportion of the tax burden, however unwelcome it may be, without flinching. (*Decision at p. 1201, Transcript of Record.*)

The case of Quong Wing v. Kirkendall, 223 U. S. 59, is a case which rather upholds the contention of respondents for there Mr. Justice Holmes said:

A State does not deny the equal protection of the laws by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry. Like the United States, although with more restriction and in less degree, a State may carry out a policy, even a policy with which we might disagree. *McLean* v. *Arkansas*, 211 U. S. 539, 547. *Armour Packing Co.* v. *Lacy*, 200 U. S. 226, 235. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 562. It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, as was illustrated in *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 92, 95; *Williams* v. *Fears*, 179 U. S. 270, 276; *W. W. Cargill Co.* v. *Minnesota*, 180 U. S. 452, 469. (Pp. 62, 63.)

5. Act No. 2972 is a lawful exercise of the police power. In its broadest sense, this power has been defined to embrace not only regulations having for their object the protection of public health, morals, and safety but also to be practically synonymous with the reserved powers of sovereignty. In the License Cases, 46 U. S. 504, 582, Chief Justice Taney said:

But what are the police powers of State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominion. And whether a State passes a quarantine law, or a law to punish offences, or to establish courts of justice, or requiring certain instruments to be recorded, or *to regulate commerce within its own limits*, in every case it exercises the same powers; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of

this power that it legislates; *and its authority to make regulations of commerce is as absolute as its power to pass health laws,* except in so far as it has been restricted by the Constitution of the United States.

In Sligh v. Kirkwood, 237 U. S. 52, 59, Mr. Justice Day said:

The police power, in its broadest sense, *includes all legislation* and almost every function of civil government. *Barbier* v. *Connolly*, 113 U. S. 27. It is not subject to definite limitations, but *is coextensive with the necessities of the case and the safeguards of public interest. Camfield* v. *United States*, 167 U. S. 518, 524.

Late Chief Justice White, in Dakota Central Tel. Co. v. South Dakota, 250 U. S. 163, 185, also said:

It was conceded that the words "police power" were susceptible of two significations, *a comprehensive one embracing in substance the whole field of state authority* and the other a narrower one including only state power to deal with the health, safety, and morals of the people.

In Miller v. Board of Public Works (Cal., 1925), 234 Pac. 381, 38 A. L. R. 1479, the court said:

In its inception the police power was closely concerned with the preservation of the public peace, safety, morals, and health, without specific regard for the "general welfare." The increased complexity of our civilization and institutions later gave rise to cases wherein the promotion of the public welfare was held by the courts to be a legitimate object for the exercise of the police power. As our civil life has developed so has the definition of "public welfare" until it has held to embrace regulations "*to promote the economic welfare and general prosperity of the community.*" Chicago, B. & Q. R. Co. v. Illinois, *supra*. Thus it is apparent that the police power is not a circumscribed prerogative, but is elastic, and in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life, and thereby keep pace with the social, economical, moral, and intellectual evolution of human race. In brief, "there is no-

thing known to the law that keeps more in step with human progress than does the exercise of this power" (Streich v. Board of Education, *supra*), and that power "may be put forth in aid of what is sanctioned by usage, or *held by* the prevailing morality or *strong and preponderant opinion to be greatly and immediately necessary to the public welfare.*" (Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 32 L. R. A. (N. S.) 1062, 31 Sup. Ct. Rep., 186, Ann. Cas. 1912A, 487.)

The police power *includes all regulations designed to promote the public convenience, general welfare, and general prosperity, and extends to all great public necessities,* as well as regulations designed to promote the public health, the public morals, or the public safety. (State v. Pitney, 140 Pac. 918, 79 Wash. 608, Ann. Cas. 1916A, 209.)

It cannot be gainsaid that the Legislature, in approving Act No. 2972, properly exercised the state police power in its broadest sense. Likewise, it cannot be gainsaid that, in such exercise of its police power, the Philippine Government intended to remedy a great public necessity, and the means adopted by it is not unreasonable, arbitrary, or oppressive, as already shown, but necessarily required by the circumstances of the case. And while each country has plenary power to legislate according to its conception of public welfare (Petersen v. Iowa ex rel. State Treasurer, 245 U. S. 170).

A court has not right to invalidate or overthrow legislation depriving a person of his liberty or property * * * unless it is palpably clear that it has no real and substantial relation to the public welfare; the right to determine what such welfare demands being primarily in the legislature or local assembly, and every presumption being in favor of its rightful exercise. (Grainger v. Douglas Park Jockey Club, 148 Fed. 513, 8 Ann. Cas. 997.)

It is also well settled that the due process clause of the Fourteenth Amendment does not restrain the States in the exercise of their legitimate police power. (Pacific Gas & E. Co. v. Police Court, 251 U. S. 22.)

6. Act No. 2972 was undoubtedly enacted for reasons of public policy. This being so, the legislative judgment in the choice of adequate means to effectuate such a policy cannot be superseded or substituted by the judicial judgment. In McCulloch v. Maryland, 4 Wheat. 316, 421, Chief Justice Marshall said:

> The sound construction of the constitution must allow to the national legislature that discretion with respect to the means by which the power it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people.

Why should such a discretion be denied a territorial legislature, if in matters relative to public policy, public convenience, revenue, and taxation it stands upon the same footing with the states and even the national government? This Court has held that—

> When a State exerting its recognized authority undertakes to express what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. (Purity Extract Co. v. Lynch, 226 U. S. 192.)

> But a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect. (Block v. Hirsh, *supra.*)

> Questions of policy are not submitted to judicial determination, and the courts have no general authority of supervision over the exercise of discretion which under our system is reposed in the people or other departments of government. *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219, U. S. 549, 569; *German Alliance Insurance Co.* v. *Lewis*, 223 U. S. 389. (Green v. Frazier, 253 U. S. 233, 240.)

> "But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or be convinced of the wisdom of its exercise." It is enough if the legislation be passed in the exercise of a power of government and has relation to that power. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 365.

366, and cases cited; also *Bunting* v. *Oregon*, 243 U. S. 426, 437. (La Tourette v. McMaster, 248 U. S. 465, 468.)

The following are well established doctrines in the matter:

The Fourteenth Amendment to the Constitution of the United States does not interfere with the proper exercise of the police power of the several states. * * * *By its enactment it was not intended to deprive government of powers so essential to its existence* and so closely interwoven in the social fabric. * * * (6 R. C. L. 195–199.)

The police power extends to the enactment of laws which promote the public welfare, as distinguished from the interests of a particular class. The power of the legislature in this respect is *very great*, and *its discretion in the employment of means* to that end *is very large*, and it may enact laws to preserve and promote the public welfare, *even at the expense of private rights.* In the exercise of the police power *the legislature may prohibit all things* hurtful to the welfare of society, or *detrimental to the public interests.* * * * (6 R. C. L. pp. 210, 211.)

7. Act No. 2972 is not unreasonable nor arbitrary. To the reasons already advanced in support of our contention as to the reasonableness of the Act it may be added the testimony of the Collector of Internal Revenue, Mr. Juan Posadas, Jr., whose long administrative experience and practical knowledge of facts connected with the collection of taxes are worthy of consideration. His testimony is in part as follows:

Q. If the books of account, not only of the Chinese merchants, but of the other foreign merchants, were kept in their own languages and not in English, Spanish, or some local dialect, would it be possible to have the books of account of these merchants audited by the agents and employees of the Bureau of Internal Revenue?

* * * * * * *

A. It would be impossible, unless our office had a personnel sufficiently numerous and competent to make the audits

of the books of account in the different languages in which they were kept.

Q. Has the Bureau of Internal Revenue that sufficient and competent personnel to audit the books of account of merchants who do not keep their books in Spanish, English, or some local dialect?

A. No, sir, we have only an insignificant number of Chinese accountants to make examinations of the books of the Chinese merchants.

Q. And as to the books of account of the other merchants who do not keep their books in English, Spanish, or some local dialect—the other merchants who are not Chinese?

A. No, sir, we have not at present any personnel for that.

Q. If the Bureau of Internal Revenue were not able—as according to you it is not able—to examine properly the books of account of merchants who do not keep their books in English, Spanish, or some local dialect, and the case arose that those merchants who do not keep their books in the languages permitted by Act No. 2972 should pay the full amount of taxes due to the Internal Revenue, even though they were acting in good faith—could such a case occur?

* * * * * * *

A. Yes, sir, because judging from the audits even of those books of account which are intelligible to the office personnel, the office has found many differences or items not declared for the purpose of taxation.

Q. In the case of banks, had it occurred at any time that they have had to pay taxes in excess of the amounts declared by them?

* * * * * * *

A. Yes, sir.

* * * * * * *

Q. Can you state, Mr. Posadas, how the proposed law, Act No. 2972, would affect the uniformity of the assessment of taxes which the merchants should pay?

* * * * * * *

A. For the ends of justice and equity in the assessment of taxes, it is very essential that it be uniform. While the Bureau at present can discover errors or omissions or differences which appear in the tax returns of taxpayers who keep their books in a language intelligible to the office, we

cannot do the same so far as concerns other merchants who keep their books in other languages, in view of the fact that we have not the proper personnel for that work. We can only examine a small number of the books of account of the Chinese.

* * * * * * *

Q. Do you know how many cases of merchants were examined in 1922 by the Chinese accountants of the Income Tax Division of your Bureau?

* * * * * * *

A. During that year, the Chinese accountants in the Income Tax Division inspected 477 returns of Chinese.

Q. Books, or returns?

A. Returns of Chinese.

Q. Were those the only returns that could be inspected?

A. By the Chinese accountants, I believe so.

* * * * * * *

Q. Do you know whether there were any under-declarations in those cases that were inspected that you have referred to?

* * * * * * *

A. In the comparison of these returns with the books of account of the interested parties, differences were found which amount to more than ₱600,000 which was not declared.

* * * * * * *

Q. And in what manner have you been inspecting the books of account of the Chinese merchants in the provinces?

A. Ordinarily, our agents make a superficial comparison, having the Chinese themselves read the entries which appear in their books of account, in order to compare them with the returns which they have for tax purposes; and they examine the Bureau of Internal Revenue sales books, with which the greater portion of the Chinese merchants have provided themselves, as a rule.

Q. It is not true that many of these sales books are kept in Chinese characters?

A. As I have stated, the greater part of the Chinese establishments, in addition to their books of account kept in Chinese, also have the Bureau of Internal Revenue sales books, which is kept in Arabic characters.

* * * * * * *

A. The advantage of the Accounting Law, which compels merchants to keep their books in English, Spanish, or some local dialect lies precisely in the fact that it would facilitate the inspection of these books of account by the employees of the Bureau of Internal Revenue, and enable them to check up the taxes which have been paid by the merchants and ascertain whether or not they agree with the transactions actually had. This work is at present being done so far as concerns the merchants who keep their books in languages comprehensible to the Bureau, and to a certain extent it means that these merchants are penalized. On the other hand, it has been almost impossible to do this with regard to those merchants who keep their books entirely in languages not comprehensible to the office, and the net result therefore is that while we can collect differences in taxes due from part of the merchants, it is almost impossible to do so with regard to the other part.

* * * * * * *

Q. But supposing that you had also Chinese accountants competent to act as supervising agents in the provinces, then what advantage would there be in enforcing Act No. 2972?

A. The advantage would consist precisely in the fact that we would avoid the duplication of personnel, because otherwise we would have to duplicate the personnel in each district by employing Filipinos and Chinese.

* * * * * * *

A. To what extent it would be difficult for the Chinese to keep informed as to their transactions in case the books were kept in English, Spanish, or any local dialect, I can't state exactly, but I consider that there would be less difficulties, in view of the fact that the majority of the Chinese merchants in the Philippines have resided here for many years and that they speak English, Spanish, or some local dialect.

* * * * * * *

Q. How would the Chinese merchant, who knows no other language than Chinese, proceed to supervise the keeping of his books in a language unknown to him?

A. I don't believe that the majority of the Chinese merchants in the Philippines are wholly ignorant of Spanish, English, or some local dialect, so that they would not be able

to exercise due supervision of the manner in which their books of account are kept.

Q. But even supposing that the law is not merely for the protection of the majority, but also for the protection of the minority, how would those of the minority proceed who did not have a sufficient knowledge of any language other than their own to inform themselves as to the contents of their books and to supervise the account end of their businesses?

A. I don't believe there exists in the Philippine Islands any Chinese business house in which there are not one or two who know English, Spanish, or some local dialect.

Q. Even to the point of reading and writing it?

A. I believe so.

Q. So that there is not even the minority of which we have spoken?

A. It is very possible that there are some merchants who do not know how to read or write, but among their Chinese employees to whom I refer there will always be one or two who can read English, Spanish or some local dialect.

* * * * * * *

A. I believe that if that minority exists it will not be easy for their bookkeepers to deceive them, inasmuch as those merchants who form that minority know sufficient about the transactions in their respective businesses to make it difficult for the bookkeepers to increase or decrease the amount involved in a given transaction without the merchants themselves becoming aware of it.

* * * * * * *

Q. Assuming that a Chinese merchant who knows no language other than his own should be compelled to have his books kept by a Filipino bookkeeper in Spanish or English, how would you expect him to know whether they were kept correctly or not?

* * * * * * *

A. That would depend upon the merchant himself. I desire to state here that the Chinese merchants pay their taxes to the Government upon the basis of return made in English and Spanish, and I believe that in this respect Chinese have not had much difficulty in filing those returns.

(*Transcript of Record pp. 690–756.*)

II

THE PHILIPPINE SUPREME COURT PLACED A PROPER CONSTRUCTION ON ACT No. 2972.

In spite of its apparently unambiguous language, it cannot be denied that Act No. 2972 is susceptible of various constructions. As the lower court said:

> A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish, or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional.
>
> A second interpretation is that the Chinese merchants, while permitted to keep his books of account in Chinese, must also keep another set of books in either English, Spanish, or a native dialect. The respondents claim the law is susceptible of such construction. It occurs to us, however, that this construction might prove as unsatisfactory as the first. Fraud is possible in any language. An approximation to governmental convenience and an approximation to equality in taxation is the most which may be expected.
>
> A third construction which is permissible in view of the history of the legislation and the wording of the statute, is, that the law only intended to require the keeping of such books as were necessary in order to facilitate governmental inspection for tax purposes. (*Decision at pp. 1197, 1198, Transcript of Record.*)

By adopting a construction which will render constitutional Act No. 2972 the Philippine court has only followed an unbroken line of American decisions upholding its view in the matter. In re Matthews, 109 Fed. 603, 616–618, the court said:

> But Mr. Sutherland, in his work on Statutory Construction, says at paragraph 323:
>
> A construction which must necessarily occasion great public and private mischief must never be preferred to a construction which will occasion neither or not in so great a degree, unless the terms of the

instrument absolutely require such preference. Of two constructions, either of which is warranted by the words of the amendment or the public act, that is to be preferred which best harmonizes the amendment with the general tenor and spirit of the act amended. A statute may be construed contrary to its literal meaning when a literal construction would result in an absurdity or inconsistency, and the words are susceptible of another construction which carries out the manifest intention.

The same author, at section 218, says:

It is indispensable to a correct understanding of a statute, to inquire first: What is the subject of it? What object is intended to be accomplished by it? When the subject-matter is once clearly ascertained, and its general intent, a key is found to all its intricacies. General words may be restrained to it, and those of narrower import may be expanded to embrace it to effectuate that intent. When the intention can be collected from the statute, words may be modified, altered, or supplied so as to obviate any repugnancy, or inconsistency with such intention.

Mr. Justice Field, in the Eureka Case, 4 Sawy. 302, Fed. Cas. No. 4,548, said:

Instances without number exist where the meaning of words in a statute has been enlarged, restricted, or qualified to carry out the intention of the legislature. The inquiry, where any uncertainty exists, always is as to what the legislature intended, and, when that is ascertained, it controls.

* * * * * * *

Decisions might be multiplied on this subject. It is sufficient to say that these cases show that in construing statutes the fundamental rule is to get at the intention of the legislature. Mr. Sutherland says:

No clearer statement has been or can be made of the law as to the dominating influence of the intention of a statute in the construction of all its parts than that which is found in Kent's Commentaries: "In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms, and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context, from the occasion and necessity of the law, from the mischief felt and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion."

Blackstone, in his Commentaries, mentions three things which are to be considered in the construction of all remedial statutes: the old law, the mischief, and the remedy; that is,

how the law stood at the making of the act, the mischief for which the law did not adequately provide, and what remedy the legislature has supplied to cure this mischief. And it is the duty of judges so to construe the act as to suppress the mischief and advance the remedy. This injunction is simply to carry out the intention of the lawmaker, which is the cardinal aim with reference to all statutes. The intention in statutes which are for this purpose recognized as remedial, or enacted *pro bono publico*, is more liberally inferred, and to a greater extent dominates the letter, than is admissible in dealing with those which must be strictly construed.

Mr. Justice Brandeis, in Carey v. South Dakota, 250 U. S. 118, 122, said:

Where a statute is reasonably susceptible of two interpretations, by one of which it would be clearly constitutional and by the other of which its constitutionality would be doubtful, the former construction should be adopted. *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, 422; *Knights Templars' Indemnity Co.* v. *Jarman*, 187 U. S. 107, 205.

In Londoner v. Denver, 210 U. S. 373, 379, Justice Moody said:

We see nothing in the sixth assignment of error. It is apparently based upon the proposition that, in construing a law of the State in a manner which the plaintiffs in error think was clearly erroneous, the Supreme Court of the State exercised legislative power, and thereby violated the Fourteenth Amendment. We are puzzled to find any other answer to this proposition than to say that it is founded upon a misconception of the opinion of the court and of the effect of the Fourteenth Amendment. The complaint in this assignment is not that the court gave a construction to the law which brought it into conflict with the Federal Constitution, but that, in construing the law so as to bring it into harmony with the Federal and state constitutions, the court so far neglected its obvious meaning as to make the judgment an exercise of legislative power. We know of nothing in the Fourteenth Amendment which gives us authority to consider

a question of this kind. We think it fitting, however, to say that we see nothing extraordinary in the method of interpretation followed by the court, or in its results. Whether we should or not arrive at the same conclusions is not of consequence.

In United States v. Delaware & Hudson Co., 213 U. S. 366, 407, Chief Justice White said:

It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. *Knights Templars' Indemnity Co.* v. *Jarman*, 187 U. S. 197, 205. And unless this rule be considered as meaning that our duty is to first decide that a statute is unconstitutional and then proceed to hold that such ruling was unnecessary because the statute was susceptible of a meaning, which causes it not to be repugnant to the Constitution, the rule plainly must mean that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter. *Harriman* v. *Interstate Com. Comm.*, 211 U. S. 407.

III

THE CONSTRUCTION OF ACT No. 2972 BY THE PHILIPPPINE SUPREME COURT IS NOT REVIEWABLE

Numerous decisions may be cited in support of this theory. We will content ourselves with quoting the following:

The construction placed on the constitution and laws of a State by its highest court must be accepted by this court in determining their consistency with the Federal Constitution. (Mr. Justice McKenna in Thornton v. Duffy, 254 U. S. 361, 368.)

But it is elementary that this court is without authority to review and revise the construction affixed to a state statute as to a state matter by the court of last resort of the State.

Commercial Bank v. *Buckingham*, 5 How. 317, 342; *Johnson* v. *New York Life Insurance Co.*, 187 U. S. 491, 496; *Ross* v. *Oregon*, 227 U. S. 150, 162; *Ireland* v. *Woods*, 246 U. S. 491, 496; *Stadelman* v. *Miner*, 246 U. S. 544; *Erie R. R. Co.* v. *Hamilton*, 248 U. S. 369, 371–382.

True it is elaborately argued that the court below erred in supposing that the statute was susceptible of the construction which it affixed to it, and that, instead of adopting that construction, its duty was to hold the statute void for repugnancy to the Constitution on the grounds which were urged. But this in a different form of statement but disputes the correctness of the construction affixed by the court below to the state statute and assumes that that construction is here susceptible of being disregarded upon the theory of the existence of the discrimination contended for when, if the meaning affixed to the statute by the court below be accepted, every basis for such contended discrimination disappears. It follows that the argument but accentuates the frivolous character of the Federal question relied upon. (Chief Justice White in Quong Ham Wah v. Industrial Comm., 255 U. S. 445, 448–449.)

This court when dealing with the constitutionality of state statutes, challenged under the Fourteenth Amendment, accepts the meaning thereof as construed by the highest court of the State. *St. Louis & Kansas City Land Co.* v. *Kansas City*, 241 U. S. 419. (Mr. Justice Day in Farncomb v. Denver, 252 U. S. 7, 10.)

The questions just stated are questions of local law, and in determining whether the statute violates any right secured by the Federal Constitution we must, in the particulars named, accept the interpretation put upon it by the state court (Justice Harlan in W. W. Cargill Co. v. Minnesota, 180 U. S. 452, 466–467.)

It is well settled that in cases of this kind the interpretation placed by the highest court of the State upon its statutes is conclusive here. We accept the construction given to a state statute by that court. *St. L., I. M. & So. P. Ry. Co.* v. *Paul*, 173 U. S. 404, 408; *M. K. & T. Ry. Co.* v. *McCann*, 174 U. S. 580, 586; *Tullis* v. *L. E. & W. R. R. Co.*, 175 U. S. 348. Nor is it material that the state court ascertains the meaning and

scope of the statute as well as its validity by pursuing a different rule of construction from what we recognize. It may be that the views of the Kansas court in respect to this matter are not in harmony with those expressed by us in *United States* v. *Reese*, 92 U. S. 214; *Trade Mark Cases*, 100 U. S. 82; *United States* v. *Harris*, 106 U. S. 629, and *Baldwin* v. *Franks*, 120 U. S. 678. We shall not consider that question nor the reconciliation of the supposed conflicting views suggested by the Chief Justice of the State. The power to determine the meaning of a statute carries with it the power to prescribe its extent and limitations as well as the method by which they shall be determined. (Justice Brewer in Smiley v. Kansas, 196 U. S. 447, 455.)

The decision of the highest court of a state that a statute is not in conflict with the constitution of the state, is conclusive on the Federal courts. (Rasmussen v. Idaho, 181 U. S. 198; Carstairs v. Cochran, 193 U. S. 10.)

The settled rule of this court is that, even in a case where we may exercise an independent judgment, any reasonable doubt will be resolved in favor of that construction of the state statute which has been adopted by the court of last resort in that State. *Burgess* v. *Seligman*, 107 U. S. 20; *Flash* v. *Conn*, 109 U. S. 371, 379; *Clark* v. *Bever*, 139 U. S. 96; *Board of Liquidation* v. *Louisiana*, 179 U. S. 622. (Justice Brown in Yazoo & Mississippi Valley R. Co. v. Adams, 181 U. S. 580, 583.)

IV

ACT No. 2972 DOES NOT INFRINGE ANY TREATY BETWEEN THE UNITED STATES AND CHINA

Petitioners fail to cite any treaty of the United States with some nation other than China, in which the subjects of that nation are granted the right to use their own language in bookkeeping. It may be told for sure that there is none. Plainly, bookkeeping is a matter of local law, and being such, power to legislate on said matter is not among those surrendered by the States to the Federal Government. Moreover, Act No. 2972 applies equally to natives and foreigners, be they Chinese, Japanese, Germans, French or of any nationality whatsoever.

The court below in the case of Yick Woo *versus* Hopkins (68 Cal., 294, 305–396) laid down the doctrine that a regulation which applies alike to all persons engaged in a given pursuit, without distinction as to nationality, residence, age, sex, or condition, is not, when otherwise regular and valid, subject to the criticism of being in violation of treaty obligation existing between the United States and China. This statement of the California court was not disturbed by this Court when the case was appealed to it (Yick Woo v. Hopkins, 118 U. S. 356). In another California case (*Ex parte* Ah Fook, 49 Cal. 402, 405), Judge McKinstry, referring to the Sixth Article of the Treaty between the United States and the Empire of China, concluded at Washington on July 28, 1868, which provided that—

"Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions, in respect to travel or residence, as may be enjoyed by the citizens or subjects of the most favored nation,"

said:

We can but think that to give to the general language of the treaty a construction which would deprive both the State and the United States Government of this power of *self-protection* would be a departure from the evident meaning and purpose of the high contracting parties.

In Patstone v. Pennsylvania, 232 U. S. 138, 145–146, this Court, speaking through Mr. Justice Holmes, said:

The defence under the treaty with Italy of February 26, 1871, 17 Stat. 845, appears to us to present less difficulty. The provisions relied upon are those in Article 2, giving to citizens of Italy the right to carry on trade and to do anything incident to it upon the same terms as the natives of this country; in Article 3, assuring them security for persons and property and that they "shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon

the natives" and in Article 24 promising to the Kingdom of Italy the same favors in respect to commerce and navigation that may be granted to other nations. We will say a word about each.

The last article is supposed to make applicable a convention with Switzerland (proclaimed November 9, 1855, 11 Stat., 597) providing against more burdensome conditions imposed upon the residence of Swiss than upon that of citizens. But Article 24 refers only to commerce and navigation and the case must stand wholly upon Articles 2 and 3. As to Article 2 it will be time enough to consider whether the statute can be construed or upheld as precluding Italians from possessing a stock of guns for purposes of trade when such a case is presented. The act was passed for an object with which possession in the way of trade has nothing to do and well might be interpreted as not extending to it. There remains then only Article 3. With regard to that it was pointed out below that the equality of rights is equality only in respect of protection and security for persons and property. The prohibition of a particular kind of destruction and of acquiring property in instruments intended for that purpose establishes no inequality in either respect. It is to be remembered that the subject of this whole discussion is wild game, which the State may preserve for its own citizens if it pleases. *Geer* v. *Connecticut*, 161 U. S. 519, 529. We see nothing in the treaty that purports or attempts to cut off the exercise of their powers over the matter by the States to the full extent. *Compagnie Francaise de Navigation a Vapeur* v. *State Board of Health*, 186 U. S. 380, 394, 395.

Referring to the above case, Mr. Justice McKenna, in Heim v. McCall, 239 U. S. 175, 194, said:

The treaty with Italy was considered in *Patstone* v. *Pennsylvania*, 232 U. S. 138, 145, and a convention with Switzerland (as in the present case) which was supposed to become a part of it. It was held that a law of Pennsylvania making it unlawful for unnaturalized foreign born residents to kill game, and to that end making the possession of shotguns and rifles unlawful, did not violate the treaty. Adopting the declaration of the court below, it was said "that the equality

of rights that the treaty assures is equality only in respect of protection and security for persons and property." And the ruling was given point by a citation of the power of the State over its wild game which might be preserved for its own citizens. In other words, the ruling was given point by the special power of the State over the subject matter, a power which exists in the case at bar, as we have seen.

From the foregoing cases the general proposition may be inferred that a treaty should not be so construed as to infringe upon the special power of the State over a given matter, such as bookkeeping in the instant case. For—

> In determining the effect of a treaty, it will be presumed that the United States did not intend to deprive any State of the right to exercise any of its sovereign powers. (Puget Sound Agricultural Co. v. Pierce County, 1 Wash. Terr. 159.)

Throughout the brief of petitioners there floats the accusation that Act No. 2972 is a hostile legislation whose secret purpose is to drive Chinese merchants out of business. This uncorroborated assertion is eloquently denied by the history of this Act and by the present friendly relations between the Chinese residents, our kith and kin, and the native population, which relations were a thing of yore even before the first Spanish soldiers came upon the Philippine shores. On the other hand, the operation and effect of Act No. 2972 would not, as above shown, bring about any wholesale sweeping of the Chinese from the field of business as foretold by the petitioners. Conceding, however, that such would be the result of the Act, it must be borne in mind that the right of the Government to subsist, to hold its own lest it should break down is paramount. It is elemental that taxation means even destruction, and that for public purposes burdens may in certain cases be imposed without compensation. With regard to hostile legislation,

Mr. Justice Field said in Soon Hing v. Crowley, 113 U. S. 703, 710:

The principal objection, however, of the petitioner to the ordinance in question is founded upon the supposed hostile motives of the supervisors in passing it. The petition alleges that it was adopted owing to a feeling of antipathy and hatred prevailing in the city and county of San Francisco against the subjects of the Emperor of China resident therein, and for the purpose of compelling those engaged in the laundry business to abandon their lawful vocation, and residence there, and not for any sanitary, police, or other legitimate purpose. There is nothing, however, in the language of the ordinance, or in the record of its enactment, which in any respect tends to sustain this allegation. And the rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferrible from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives considered as the moral inducements for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the imposibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile.

In closing, we believe it only fitting to repeat these oft-quoted statements made by the great Chief Justice Marshall:

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution are constitutional.

The question whether a law be void for its repugnancy to the Constitution, is at all times a question of much delicacy

which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligation which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.

WHEREFORE, the respondents respectfully pray that the decision of the Supreme Court of the Philippine Islands in this case be affirmed.

Respectfully submitted,

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○

No. 623

Office Supreme Co
F I L E
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WM. R. STAN

In the Supreme Court of the United States

OCTOBER TERM, 1925

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

against

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVELLA, as Fiscal for the City of Manila, and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila,

Respondents.

On Writ of Certiorari to the Supreme Court of the Philippine Islands.

BRIEF ON BEHALF OF RESPONDENTS

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In the Supreme Court of the United States.

OCTOBER TERM, 1925

No. 623

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

v.

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVELLA, as Fiscal for the City of Manila, and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila,

Respondents.

On Writ of Certiorari to the Supreme Court of the Philippine Islands.

BRIEF ON BEHALF OF RESPONDENTS

THE FACTS.

History of this Proceeding.

This case comes to the Supreme Court on a writ of certiorari to review a decision of the Supreme Court of the Philippine Islands denying a petition for prohibition and injunction against the enforcement by criminal prosecution of Act No. 2972 of the Philippine Legislature. The Act was attacked as uncon-

stitutional, but the Supreme Court of the Philippine Islands upheld it.

The history leading up to this case is as follows: For many years certain of the authorities of the Philippine Islands have felt that the lack of a common language and literature was a serious handicap to intellectual and commercial development. The Court below (R. 1181) discusses the statutory history of the "attempt to hasten the adoption of a common language" and mentions some of the difficulties "which have beset it." On October 16, 1920, the then Governor General, in a message to the Legislature, recommended "legislation as already approved by the Senate * * * that all business houses keep their books in English or Spanish or in any one of the local Philippine dialects, in order to avoid wholesale frauds upon the public revenues." (R. 1068, 1069.)

Accordingly, Act 2972 was passed by the Philippine Legislature and approved February 21, 1921. It reads as follows:

> "NO. 2972. AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.
>
> *"Be it enacted by the Senate and House of Representatives of the Philippines in legislature assembled and by the authority of the same:*
>
> "Section 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.
>
> "Section 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.
>
> "Section 3. This Act shall take effect on November first, Nineteen Hundred and Twenty-one.
>
> "Approved, February 21, 1921."

It will be noted that the Act was to take effect by its own terms on November 1, 1921. Later on, however, it was amended as to the effective date by Act No. 2998, and actually it took effect on January 1, 1923. As a matter of fact, however, due

to efforts to have the Act repealed, its enforcement seems to have been suspended until the adjournment of the Legislature in February, 1923. (R. 1160.) Accordingly, the Act was not enforced for a period of a little more than two years after its approval.

On March 7, 1923, the City Fiscal of the City of Manila commenced Criminal Case No. 25551, by causing an information to be filed against Yu Cong Eng, one of the petitioners herein, for violation of Act 2972 (R. 13, 1161). This defendant, joining with him one Co Liam, filed a petition in the Supreme Court of the Philippine Islands asking for a relief in the nature of a writ of prohibition which should require that the respondents in that proceeding, that is, the Collector of Internal Revenue, the City Fiscal of Manila, and the Judge of the Court of First Instance, should desist and refrain from further action in such case against the Petitioner Yu Cong Eng, and from instituting or prosecuting any other criminal actions under Section 2972, on the ground that such Act was unconstitutional. From the decision of the Supreme Court of the Philippines, denying the relief sought by the petitioners, holding that the Act was constitutional and valid, and interpreting the Act as meaning by the phrase "books of account" such books as are required by the regulations of the Bureau of Internal Revenue to be kept for taxation purposes, a writ of certiorari was granted by this Court.

Important Philippine Statutes.

There are two tax laws in effect in the Philippine Islands from which a substantial part of the revenue of the Islands is derived. There is a sales tax on the gross sales of certain businesses and occupations. A quarterly return is required, showing the amount of receipts or earnings, and a tax of one and a half per cent is due on the gross value of the goods sold, etc., based on the actual selling prices. (Administrative Code, Sections 1453, etc., Act 3065, R. 1162.) There is also an income tax. (R. 1162.) The revenue accruing from the sales tax is roughly ten million pesos annually, and from the income tax, about two million pesos. (R. 1163.)

Another statute referred to by the court below is the so-called Code of Commerce, such part of which as is in effect having

been carried over from the old Spanish Code. Art. 33 of that Code provides that all merchants shall keep,

(1) A book of inventories and balances,
(2) A day book,
(3) A ledger,
(4) A copy book of telegrams, letters, etc.,
(5) Such other books as may be required by special laws.

Moreover, under the provisions of the Code of Commerce and Internal Revenue law, the Commissioner of Internal Revenue had authority to require the keeping of daily records of sales, (R. 1163) and further had the power to make regulations prescribing the manner in which the proper books, invoices and other papers should be kept and entries made therein by the persons subject to the sales tax. (R. 1164, Act No. 2339, Sections 5, 6; Administrative Code, Section 1424 (j)).

The Purpose of Act No. 2972.

It would seem that only from a very superficial and perhaps even disingenuous reading of the Record, is it possible to conclude that the purpose of Act 2972 was anything other than what it purported to be. It is an Act in aid of the administration of the Revenue Laws and of the collection of taxes. It is conceived that in a case like this, where the Supreme Court of the Philippine Islands made no separate findings of fact and conclusions of law, the statements of fact found in the opinion are to be taken as facts found by the Court. *Strong v. Repide,* 213 U.S., 419, 429. At pages 1183-1184 of the Record the Court below says:

> "The purpose of the Legislature in enacting Act No. 2972 is disclosed by the decision of this Court in *Young v. Rafferty, supra,* (33 Phil. 556) by the Messages of the Governor-General, by the hearings before the Committees of the Philippine Legislature, and by other sources. All these indicate that the Act is a fiscal measure intended to facilitate the work of the Government agents and to prevent fraud in the returns of merchants, in conformity with the sales tax and the income tax."

The contention of counsel for the Petitioners on this appeal, as exemplified by their statement at the top of page 34 of their

brief, that the real purpose of Act 2972 was the destruction of the Chinese merchants of the Philippine Islands, finds no slightest warrant in the Record.

True, indeed, one of the proponents of the law intimated that if the Chinese were driven out of business, the Filipinos would take their places. (R. 986; Petitioner's brief, p. 11.) But a reading of the context shows that what was being debated was not the original law, but amendments to that law, which, as the proponents of Act 2972 considered, weakened it materially. The statement was an answer to questions suggesting that the amendments were necessary to protect the interests of Chinese merchants.

On page 38 of petitioners' brief there is quoted a statement by the Collector of Internal Revenue, supposed to indicate that Act 2972 was not intended as a fiscal measure. (R. 608.) It was made by him in the course of a cross-examination in which the then attorney for the petitioner was attempting to embarrass the witness by showing, either that he was coerced by the Governor-General into helping with the drafting and passage of an amendment to Act 2972 in which he himself did not believe, or else, that the Collector had himself believed in the unpopular Amendment. The explanation of the Collector's statement is found in his idea that Act 2972 would be in aid, not only of the Bureau of Internal Revenue, but of the insular treasury in its inspection of insurance companies and banks, and of the police officers in their inspection of the records of hotels and pawn shops. (R. 608-609.)

These statements are the only support found by petitioner's counsel for the sweeping allegations in their brief in this Court that Act 2972 involved a deliberate design on the part of the Legislature of the Philippine Islands to drive out of business the Chinese merchants in the Islands by the subterfuge of a law requiring the keeping of books in certain languages.

There appear in the record transcripts of parts of the debates occurring in the Philippine Legislature at the time when the proposed amendment restricting the effect of Act 2972 was under consideration. In these debates there is apparent some feeling against the Chinese merchants. Perhaps the best explanation of this feeling is found in the statements of Sr. M. Jesus Cuenco,

Chairman of the Committee on Revision of Laws, in his report to the Philippine House of Representatives, dated Feb. 14, 1923. (R. 1065.) He states that after the passage of Act 2972, the Chinese merchants sent delegates to America, where they not only tried to show the supposed injustice of the Act, but questioned the capacity and judgment of the Philippine Legislature in a censurable manner (R. 1069); but there is not in the entire record a scintilla of evidence to show that Act 2972, recommended by an American Governor-General (R. 1167), strenuously supported by the representatives of the Bureau of Audits and of the Bureau of Internal Revenue of the Islands (R. 1070, 923), and passed by the Legislature of the Philippine Islands after extensive debates, had any other purpose than to cure a material defect in the administration of the revenue laws of the Islands. Indeed, the Collector of Internal Revenue and the later Acting Collector of Internal Revenue, Messrs. Trinidad and Posadas, stated over their signatures that the law was necessary in order to protect the revenues of the Government (Ex. 3, R. 1017-1018). Mr. Posadas was of the opinion that,

> "due to the books of the Chinese merchants being unintelligible on account of the language in which they are written, the public treasury is defrauded in several millions of pesos every year;" (R. 1070, 940-941.)

The Necessity for the Enactment of Act 2972 for the Protection of the Revenues of the Philippine Government.

The recommendation of the Governor-General of the Philippine Islands of October 6, 1920, suggesting the passage of such an Act as No. 2972, was brought about, according to the report of the Committee on Revisions of Laws, dated February 14, 1923, by the fact that the Supreme Court of the Philippines had held invalid a regulation issued on October 8, 1914, by the Director of the Bureau of Internal Revenue compelling all merchants to keep certain books in English or Spanish. This decision was based on the proposition that the Collector had no authority in law for the making of such a regulation, and the Supreme Court carefully guarded itself against expressing any opinion as to the validity of any such regulation, if and when passed as an act of the Legislature. The report of the Committee, referring to

this decision of the Philippine Supreme Court in *Young v. Rafferty*, 33 Phil. 556, states:

> "This on the one hand, and the false declarations made by many Chinese merchants in their income tax returns on the other, induced some members of the Legislature to present in different periods in the interests of the Government, bills whose object was to require that the books of merchants be kept in English or Spanish."

Perhaps more than anything else, however, Exhibits X and X-1, provided this Court considers them admissible in evidence and entitled to its consideration, indicate the results of the inability of the Bureau of Internal Revenue to check up the books of Chinese merchants. (R. 1117-1119.) The history of these two Exhibits is a curious one. Paragraph XIV of the amended petition alleges that the 12,000 Chinese merchants—

> "* * * as shown by the records of the Internal Revenue Department, presided over by the respondent, W. Trinidad, now pay and for many years last past have been paying more than 60 per cent of the taxes levied on the total mercantile transactions of the Philippine Islands, thereby conclusively demonstrating that the said Chinese merchants faithfully and honestly record their business transactions in their own language, * * *" (R. 106.)
>
> (See R. 62, ff., 947-8, 1119-22, 1134, 1141, for the history of these two exhibits.)

What they show is illuminating. In the year 1918, the Chinese merchants who are alleged in the petition and shown in the proof to be doing some 60 per cent of the total mercantile business of the Philippine Islands paid but 39 per cent of the sales taxes and were assessed only 16 per cent of the total penalties under the Sales Tax Law; that, in 1922, the Chinese merchants again paid 39 per cent of the sales taxes and were assessed a startlingly low amount totaling but 8 per cent of the penalties under the Sales Tax Law.

Under the Income Tax Law, in 1918, the Chinese merchants paid 20 per cent and, in 1922, they paid 16 per cent.

The strenuous effort of the trial counsel for the petitioners to keep this testimony out of the case after they had intimation as to what its effect would be, and particularly after they had seen it, is the measure of its importance in their eyes.

The record contains many statements showing the difficulty of examining books kept in Chinese characters and the consequent impossibility of checking up in any way the accuracy of the returns for the sales tax and the income tax submitted by Chinese merchants. Both Mr. Trinidad, the Collector of Internal Revenue at the time this proceeding was begun, and Mr. Posadas, later the Acting Collector of Internal Revenue, testified that it was impossible to secure competent Chinese accountants capable of making an inspection of the books of Chinese merchants. Thus, at page 620 of the record, Mr. Trinidad, under cross-examination, testified that the head of the department "can find all the men he needs to inspect the books kept in local dialects, while he cannot find the number of men needed to inspect the books kept in Chinese characters." Mr. Posadas stated (R. 691) that the Bureau of Internal Revenue had only an insignificant number of Chinese accountants. In Exhibit 3 (R. 1018), Trinidad and Posadas stated over their signatures that out of seventeen Chinese accountants employed up to date (Sept. 22, 1921) "five were discharged for graft, seven resigned or were forced to resign, for either unsatisfactory services rendered or for suspicion of graft, and one deceased. In spite of this number of accountants employed, only very little number of Chinese books have been investigated and audited, and in the majority of them, under-declarations of sales or receipts have been found * * *."

In this communication, Trinidad and Posadas also said that Act 2972 was necessary in order to protect the revenues of the Government.

Posadas stated at page 695 of the Record:

> "While the Bureau at present can discover errors or omissions or differences which appear in the tax returns of taxpayers who keep their books in a language intelligible to the office, we can not do the same so far as concerns other merchants who keep their books in other languages, in view of the fact that we have not the proper personnel for that work. We can only examine a small number of the books of account of the Chinese."

He stated further that to the best of his knowledge "no Filipino agent of the Bureau of Internal Revenue knows Chinese or can read or write it." The inspections that the Filipino agents make

in the Chinese establishments are limited solely to comparing the sales book of the Bureau of Internal Revenue, which is kept in Arabic characters, with the books kept in Chinese characters, having one of the Chinese read the different entries which appear in the Chinese books in order to compare them with the entries which appear in the sales book in Arabic characters, but this inspection is very difficult and it is not so efficient as if the Filipino inspectors could inspect and compare these books themselves. (R. 698.) Indeed, during the entire year 1922, there were only 477 books of Chinese merchants inspected by the Chinese accountants in the Income Tax Division (R. 697), and, in these inspections, under-declarations in transactions amounting to more than 600,000 pesos were discovered (R. 698). The necessity for Act 2972 is found not only in the fact that there are Chinese merchants in the Philippine Islands, keeping their books in Chinese characters, but also in the fact that there are other books kept not only in English and Spanish, but in Japanese and Hindu (R. 709). There are also German and Syrian merchants. (Ex. 3, R. 1018.)

The difficulty of obtaining competent Chinese accountants is pointedly emphasized by the fact that out of 80 agents and inspectors engaged in the inspection and audit of books outside Manila, in addition to other employees engaged in special work, there is only one man of Chinese nationality (R. 716). Accordingly, in many cases Chinese books from the provinces outside Manila have to be forwarded to the Manila office for inspection (R. 718 to 719). This practice, of course, is limited to the books of Chinese merchants, because Filipino inspectors can readily inspect the books kept in the various dialects (R. 719), and the reason for bringing in the Chinese books is the shortage of Chinese accountants in the provinces (R. 720).

Perhaps the strongest statement of the policy underlying Act 2972 is found in the statement of Mr. Posadas, at page 723 of the record, which is so clear and forceful as to warrant quotation. He says:

> "The advantage of the Accounting Law, which compels merchants to keep their books in English, Spanish, or some local dialect, lies precisely in the fact that it would facilitate the inspection of these books of account by the employees

of the Bureau of Internal Revenue, and enable them to check up the taxes which have been paid by the merchants and ascertain whether or not they agree with the transactions actually had. This work is at present being done so far as concerns the merchants who keep their books in languages comprehensible to the Bureau, and to a certain extent it means that these merchants are penalized. On the other hand, it has been almost impossible to do this with regard to those merchants who keep their books entirely in languages not comprehensible to the office, and the net result therefore is that while we can collect differences in taxes due from part of the merchants, it is almost impossible to do so with regard to the other part."

Again, Mr. Posadas assigns as the reason for this situation the fact that the Bureau has never been able to get a sufficient number of competent Chinese employees to make the inspections of the books of account of the Chinese (R. 724). He points out, morover, that in the efficient collection of taxes, the most important part of the work consists in the inspections made in the field by these very agents, assistant agents, and examiners (R. 726), whose inability to understand Chinese books effectually ties their hands.

Nothing could more clearly show the difficulties met by the Bureau of Internal Revenue than the strained attempt of the trial attorney for the petitioners to show on cross-examination that by having an entire duplicate personnel in every Internal Revenue district in the Islands—practically two men for each job—the Bureau would be able successfully to inspect and check up the books of these Chinese merchants (R. 734)—provided, that is, that a sufficient number of Chinese accountants should by some miracle suddenly become available.

It was suggested by one of the witnesses for the petitioner that competent Chinese accountants, if not available in the Islands, could be readily obtained in China. Mr. Jesus Obieta, Deputy Collector of Customs, charged with the enforcement, among other things, of the Chinese exclusion act (R. 814-15), pointed out that Chinese, except members of the so-called exempt classes, that is, merchants, teachers, students, officials of the Chinese Government, and visitors upon sightseeing or pleasure trips, are not permitted to enter the Philippine Islands. Chinese bookkeepers or accountants are excluded. (R. 814, 816.)

Defects in Petitioners' Proof.

The record fails to substantiate the contention of the petitioners that, if Act 2972 were enforced, the Chinese merchants would be virtually driven out of business. Indeed, the evidence suggests not only that it would have been readily possible for them in the interval between the passage and effective date of the Act to prepare for compliance with its terms without undue difficulty, but also that though up to the present they have made no effort to comply, nevertheless the hardship upon them even now would be temporary and comparatively inconsequential.

The petitioners' case is devoid of proof from which, if it could be assumed that hardship to a great number of the Chinese merchants is to be a controlling factor, it can be ascertained how many of the Chinese merchants would suffer any hardship whatsoever.

It will be remembered that the Sales Act contains an exemption from taxation of persons doing less than a certain minimum business.

Exhibit G., R. 957, indicates that among the 8445 retail Chinese merchants in the Islands, the average amount of sales per annum is 5446.40 pesos. There is absolutely nothing, however, to show how many of these retail merchants make gross quarterly sales of less than 200 pesos, nor how many of them come within the other exceptions creating classes exempt from the Sales Tax Law, (Section 1457, 1459, Administrative Code of the Philippine Islands, 1917). There is nothing in the petitioners' proof to show how many of the Chinese merchants are subject to this exemption, nothing whatsoever to show how many of them are exempt from making an income tax return or from paying the tax.

There is nothing to show how many of the Chinese merchants could readily afford to employ a bookkeeper capable of keeping their books in the languages prescribed by the Act, and how many would suffer hardship by being compelled to do so; nor, if any would suffer hardship, how serious a hardship it would be.

As to the Chinese merchants of moderate incomes, there is again nothing to indicate how many of them would need a bookkeeper, nor how much of a bookkeeper's time they would need, nor how many would be unable to afford a bookkeeper on whole

or part time, or would suffer hardship by being compelled to comply with the law.

As to all these classes of merchants, there is nothing but conjecture on behalf of petitioners how many of them are able at the present moment to understand enough English, Spanish, or one or more of the native dialects, to enable them to understand their books if kept in those languages. Petitioners guess only one per cent. Respondents claim two-thirds (R. 1170), and the latter claim is supported by actual investigation and test, as hereafter shown. Petitioners give no proof to show how many or how few of them have employees already competent to keep books in those languages—and of course nothing to show whether by a serious effort during the two years between the enactment and effective date of Act 2972 these merchants or their employees could not readily have learned sufficient of one of the specified languages to enable them to keep their books. The burden would naturally be proportionate to the simplicity or complexity of the books, and that—to the size of the business.

It should be noted that W. W. Larkin, one of the petitioners' witnesses, states that Chinese books are kept on the same system as ours. (R. 519.)

It is submitted that the petitioners' proof is so vague and general that, on all points above mentioned, it would be utterly impossible for a court to draw any definite conclusion as to the extent of hardship on any given number of Chinese merchants, in case Act 2972 were enforced, or to find, in fact, that any real and serious hardship did exist. The petitioner's brief in this court indeed consists, in so far as these points are involved, of a series of conclusions based on assumptions not found in the record.

The Weight of Evidence Negatives in Large Part, at Least, Petitioners' Contention That the Act would Produce Hardship Amounting to Confiscation.

The books kept by the vast majority of the smaller Chinese merchants, tienda keepers and tradesmen, are of an exceedingly simple nature (R. 158). It will be noted, however, that a number of the Chinese witnesses for the petitioners testified on cross-examination that they kept their own books, that they had had

no education in bookkeeping, but a general Chinese education, and that the mere studying of Chinese courses in the schools they attended amounted to a sufficient education to enable them to keep their simple books. Certainly, it is natural enough to suppose that a small shopkeeper could get along with very simple books indeed, like the petitioners' witness Go Sin Chong, who keeps one book himself. (R. 271.)

One of the most illuminating witnesses on this subject was Vicente Fabella, public accountant and Dean of the Jose Rizal College and himself a teacher of accounting. His college is evidently one of high standing, his courses being recognized by such Universities as Harvard, Michigan, New York, Northwestern, etc. (R. 556-558). He testified that he was familiar with the sari tienda business (R. 558); that for such a small business no trained bookkeeper is required; that a mere clerk with a second grade education in arithmetic could keep books for so simple a business (R. 560, 580, 633). In effect, he testified, what everyone knows of common knowledge, that in the case of a single proprietorship with a small to moderate sized business, the owner quite commonly disregards books altogether and knows what is going on without them. See also the testimony of H. A. Bordner, Superintendent of Schools of Manila (R. 633, 636-7, 639); Domingo Dikit, Chief of the Provincial and Municipal Department, Auditor's Office and Secretary-Treasurer of the Bureau of Accountancy of the Philippine Islands, and also a certified public accountant (R. 638-9, 650, 662).

L. N. Heras, President of the Chamber of Commerce of the Philippine Islands, head of an importing and exporting business, with a steamer under charter, and vice-president of three other companies, testified that in his business of buying and selling copra, rice, gasoline and petroleum, he employs a bookkeeper only for from half an hour to an hour one or two days a week (R. 675) and that any young man who knows arithmetic can keep simple books for a small-sized business after three or four months practice (R. 677; 683-5).

Moreover, there is a great amount of testimony to the effect that a majority of the Chinese, perhaps a great majority, understand enough of the languages specified in Act No. 2972 so that it would not be difficult for such of them as have small businesses

to keep the requisite simple books themselves or to understand them if kept by Filipino bookkeepers. The Chinese bookkeeping system is the same as ours. (R. 519.) The necessary books for these small businesses are very simple. The Chinese merchants, even now, make out their sales tax forms in Arabic numerals, and in many cases their invoices, duplicates of which are the sources of information for their bookkeepers, are made out in Spanish or English. (R. 157, 210, 223-4, 692-3; Ex. 2, R. 705; R. 821-3.)

There is much evidence, moreover, that a great number of Chinese merchants, not only in Manila, but throughout the provinces, already understand a considerable amount of English, Spanish, or one or more of the native dialects. Investigations by various agents of the Bureau of Internal Revenue show this conclusively. (R. 831-3, 838, 840-41, 847-8, 850, 856, 863-65, 866-7, 877, 887, 900, 902, 904-7, 1070.)

One of the petitioners' points most strongly urged, is that there are not sufficient available bookkeepers in the Islands to enable the Chinese merchants to comply with the law.

In the first place, there is sufficient in the record to bear out the assumption, which might naturally be made as matter of common knowledge, that the simple books of such small merchants as could not afford to hire a trained bookkeeper could readily be kept by the use, for only a few hours during the week, of some young man simply trained in arithmetic.

Mr. Fabella testified that there was no shortage of bookkeepers and that he had many unfilled applications for positions as such in his office. (R. 569.)

He testified that in the four years during which his college has been in existence he had graduated 1,000 persons, any one of whom, after a summer course of six weeks, could keep books for a tienda. (R. 560.)

There is considerable testimony as to the number of trained bookkeepers graduated in the Islands (R. 595) and there is evidence, in addition to that of Mr. Fabella, by persons well qualified to know, that there is an excess of trained bookkeepers in Manila and in the Islands (R. 649, 666). Furthermore, Exhibit 7C (R. 1027) shows a total of 2994 persons who passed a first grade Civil Service examination, including arithmetic, and 14,051

who passed the second grade, and could readily learn to keep simple books (R. 580). The petitioners, in other words, have completely failed to show that there is any shortage of persons in the Philippine Islands competent to take care of books of the Chinese merchants, and qualified for such bookkeeping, according to the difficulty and complexity of the books which they might be required to keep. Their non-compliance suggests inertia rather than inability.

The uncontradicted evidence shows that beyond holding a meeting at which it was concluded that no effort to comply with the law could be made (R. 484), the Chinese in the Islands have made no effort, in the time elapsing between the passage and effective date of the law, to prepare themselves for complying with it. This is true of the petitioner Yu Cong Eng. (R. 160. See also R. 172, 253, and the testimony of other Chinese witnesses.)

It is perhaps worth noting, moreover, that in a considerable number of other countries, laws substantially similar to Act 2972 have been passed and are in force. (R. 1031-1054, inclusive.)

SUMMARY OF ARGUMENT

I. The interpretation of Act 2972 by the lower court is controlling here.

A. The lower court's findings as to the purpose of the Act, its history, and the mischief it was designed to cure will be adopted by this Court.

1. Such findings, unless totally unsupported by evidence, will be adopted.

2. There is abundant support in the Record for them.

3. The Act, then, is to be deemed what the lower court declared it, a fiscal measure in aid of the revenue laws.

B. The lower court properly interpreted the Act with reference to its purpose.

1. The phrase "books of account" in the Act requires definition.

2. Petitioners cannot object to the court's method of interpretation when it does not extend the scope of the Act, but limits it.

3. It is the duty of a court so to interpret an act, if possible, as to remove constitutional doubts.

C. The lower court was bound to interpret the Act in accordance with existing law in the Philippines.

1. This practice is established by the authorities, and the wording of Act 2972 particularly justifies it.

2. The court considered the policy of the Islands as regards a uniform language, and the local legislation.

D. Particularly is the lower court's interpretation binding because its effect is to cure constitutional difficulties.

1. A state court's interpretation is binding when the law suggests no conflict with Federal law or Constitution; persuasive even when it does so.

2. But when the interpretation validates the law, this court will adopt it.

3. This is true even though such interpretation amounted to judicial legislation.

II. Act 2972 is not a deprivation of liberty or property without due process of law.

A. The phrase "due process of law" takes its meaning with reference to the body of law of the jurisdiction.

1. Effect of limitations in Federal Constitution within the Philippine Islands.

2. Philippine Bill of Rights.

3. The meaning of "due process" is to be sought for in the light of the body of law as found in the Philippine Islands.

B. If the Act works injury to anyone, such injury is purely incidental.

1. The Act prohibits no occupation—prevents no one from doing business. The record does not establish petitioners' claim of hardship.

2. The Act being a fiscal measure, any injury or hardship caused by it must be purely incidental. And incidental injuries do not render an otherwise valid act unconstitutional.

3. Even grave injury to property will not invalidate an act, unless it amounts patently to confiscation.

4. Petitioners' cases distinguished.

C. The requirement of "due process" is not a limitation on an otherwise valid exercise of the power of taxation.

1. The "due process" clause was not designed to limit or take away the power of taxation exercised by the Congress or by the states.

III. Act 2972 does not violate the "equal protection" clause either in language or in operation.

A. Neither the wisdom of the Act nor the hidden motives of the legislature are material.

1. The purpose of the Act as a fiscal measure is patent from the record and established by the Court's opinion.

2. The fact that the keeping of books by Chinese and other merchants in their own languages, incomprehensible to the tax authorities, was the impelling necessity for the Act cannot be ground for unconstitutionality.

3. Authorities for the above proposition.

4. There is no indication of unfairness or discrimination as regards the operation of the Act.

B. The requirement of equal protection forbids, not classification, but only arbitrary classification.

1. Classification as such is not forbidden, and a classification substantially identical with that created by Act 2972 has been held valid.

2. The test is arbitrariness, not mere unreasonableness.

3. Petitioners' cases distinguished.

4. The classification found in Act 2972 is broad and is reasonable. That it bears harder on some persons than on others is immaterial.

5. Any reasonable basis for the classification of an act is enough.

6. Facts indicating the reasonableness of the classification in Act 2972.

IV. Act 2972 as limited is sufficiently definite and certain in its requirements.

1. If the Act was indefinite as passed, it has certainly been cured of this defect by the lower Court's construction and is now completely definite.

2. It is no less definite than various Revenue Acts passed by Congress or the Regulations of the Federal Bureau of Internal Revenue.

V. The treaty between the United States and China has not the remotest bearing on this case.

1. Analysis of the treaty provisions with reference to Act 2972.

2. Petitioners' cases distinguished.

VI. Act 2972 is a proper exercise of the taxing power and of the police power.

1. General power of taxation of the Philippine legislature under the Organic Act.

2. Summary and conclusion.

ARGUMENT

I.

THE INTERPRETATION OF ACT 2972 BY THE SUPREME COURT OF THE PHILIPPINES IS CONTROLLING UNDER THE CIRCUMSTANCES OF THIS CASE.

A.

The Lower Court's Findings as to the Purpose of the Act, its History and the Mischief it was Designed to Cure will be Adopted by This Court.

The findings made by the court in its opinion are matters of fact, or at least, it is submitted, matters of mixed fact and law and will be accepted by this Court unless the conclusion should be reached that there is absolutely no evidence upon which they could be based.

De la Rama v. *De la Rama*, 201 U. S. 303, 309, 313.
Reavis v. *Fianza*, 215 U. S. 16, 21.

Moreover, of course, the Supreme Court will not go outside the Record for the issues and the facts.

Roura v. *Government of the Philippine Islands*, 218 U. S. 386, 400.

That there is abundant foundation in the evidence for the findings of the Supreme Court of the Philippine Islands on these points has been, it is submitted, demonstrated in the foregoing discussion of the facts. The fact that a number of bills designed to cure the leakage in revenues caused by the inability of the Bureau of Internal Revenue to examine the books of the Chinese, the recommendation of Act 2972 by an American Governor General, its support by the Bureau of Audits and by the Bureau of Internal Revenue and evidence showing the utter impossibility of making any check on the accuracy of returns filed not only by Chinese, but by other foreign merchants in the Islands, the total lack of any evidence to the contrary, show that the Act was a fiscal measure in aid of the administration of the revenue laws and the collection of taxes, and this the court expressly found in its opinion. (R. 1184, 1199, 1202.)

B.

It was proper for the lower court to interpret the Act with reference to its purpose and the mischief it was designed to cure.

Despite the petitioners' contention that the law was absolutely specific as enacted, it is quite obvious that the phrase "books of account" needs definition. In order to reach such a definition, the court is, of course, entitled to consider the purpose and history of the Act.

Takao Ozawa v. *United States*, 260 U. S. 178.

Petitioners object to this method of interpretation. But it is submitted that under no theory of construction are the petitioners entitled to complain when the interpretation by the lower court involves not an extension of the scope of the statute to cover

actions or persons which might not otherwise have been affected, but involves construction of the statute resulting in a narrowing of its scope and a limiting of the type of books to which its provisions were to be applicable.

Gould v. *Gould*, 245 U. S. ~~251~~ 151.
United States v. *Field*, 255 U. S. 257.

Indeed in this case it was not only within the discretion of the court so to interpret the Act, but it was its duty to interpret it so as to confine it within constitutional limits.

In *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, this court, speaking through Mr. Justice Holmes, said (p. 422):

> "If we felt more hesitation than we do, we still should feel bound to construe the statute not merely so as to sustain its constitutionality but so as to avoid a succession of constitutional doubts, so far as candor permits. *Knights Templar & Indemnity Co.* v. *Jarman*, 187 U. S. 197, 205."

See also *Federal Trade Commission* v. *Lorillard Co.*, 264 U. S. 298, 306.

That this rule has its limitations is, of course, true, but the case cited by petitioners on page 39 of their brief, *Hill* v. *Wallace*, 259 U. S. 44, 70, and the limitation specifically contended for in this case by petitioners are not applicable and have no bearing. The quotation used by petitioners when read in its context does not stand for the proposition for which they use it.

C.

The Lower Court was Bound to Interpret This Act in Accordance with Existing Law in the Philippine Islands.

It has been the practice of this and other courts to interpret statutes with reference to established legislative policy and to other statutes, in order to ascertain the intent of the legislature.

United States v. *Sweet*, 245 U. S. 563, 572-573.

In our case, the Act itself by the phrase "in accordance with existing law" strongly suggests the propriety of such a method of interpretation.

The court's opinion (R. 1181-1182) contains a reference to the established policy of the Government of the Philippine Islands looking towards the ultimate adoption of a uniform language. The court cites a considerable number of statutes illustrating that policy.

Moreover, the court gave weight to the existence of lawful regulations of the Bureau of Internal Revenue, involving the use of English or Spanish (the official languages of the Islands) in the preparing of income tax returns and of the Internal Revenue sales books required to be kept by all merchants. (R. 1198.) And it appears in the testimony that particular classes of merchants are required to keep special books and make special reports or returns or transcripts to the Bureau of Internal Revenue as aids in the collection of taxes. This is true of the wholesale dealers in leaf tobacco and of others. (R. 856, 877, 900, 902, 903-7.) A number of forms to be made out in English by various classes of merchants were attached to the Record as exhibits, but were not printed. (Ex. 14-28, R. 1054-5.)

D.

Particularly, the Interpretation of a Statute by the Highest Court of the Jurisdiction, whose Legislature Enacted it, is Binding on This Court when the Effect of Such Interpretation has been to Cure Constitutional Difficulties which Otherwise Might have Existed.

Where the interpretation of a statute by the highest court of a state does not relate to any possible conflict with a Federal statute or the Federal Constitution, it is conceived that such interpretation will always be adopted by the Supreme Court of the United States. Where, however, such a possible conflict is involved, although this Court does not deem itself bound by the lower court's construction, yet it will give great weight to it and will not lightly reverse such construction.

See *Philippine Sugar Company* v. *Philippine Islands,* 247 U. S. 385, 390.

And if the result of the lower court's interpretation is to take a statute out of the realm of constitutional doubt and make it valid, this Court, it is believed, will not consider the contention that the lower court's construction was wrong.

Petitioners object to the interpretation of the Act as a type of judicial legislation. We respectfully submit: (1) that the dividing line, if there is any, between legislation and adjudication, is so indistinct as to cast doubt on the theory of separaton of powers.

> *Oceanic Steam Navigation Company* v. *Stranahan,* 214 U. S. 320.
>
> *Ehrlich: Montesquieu and Sociological Jurisprudence,* ~~26~~ 29 Harv. L. Rev. 582, 592.

And (2) it has been held by this Court in *Londoner* v. *Denver,* 210 U. S. 373, 379, that where a state court had construed a state statute so as to bring it into harmony with the federal and state constitutions, nothing in the Fourteenth Amendment gives this Court power to review the decision on the ground that the state court exercised legislative power in construing the statute in that manner and thereby violated that amendment (p. 379):

> "The complaint in this assignment is not that the court gave a construction to the law which brought it into conflict with the Federal Constitution, but that, in construing the law so as to bring it into harmony with the Federal and state constitutions, the court so far neglected its obvious meaning as to make the judgment an exercise of legislative power. We know of nothing in the Fourteenth Amendment which gives us authority to consider a question of this kind. We think it fitting, however, to say that we see nothing extraordinary in the method of interpretation followed by the court, or in its results. Whether we should or not have arrived at the same conclusions is not of consequence."

II.

ACT 2972 IS NOT A DEPRIVATION OF LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW.

A.

The Phrase "Due Process" Takes its Meaning with Reference to the Body of Law of the Jurisdiction whose Legislature Enacted the Statute under Consideration.

It should be borne in mind that the Fifth Amendment to the Constitution does not apply to the Philippine Islands, being a limitation only on the Federal Government.

> *Capitol City Dairy Co.* v. *Ohio,* 183 U. S. 238.
> *Brown* v. *New Jersey,* 175 U. S. 172, 174.

It has been further held by this court in *Dorr* v. *United States,* 195 U. S. 138, that the Philippine Islands do not constitute an incorporated territory and that the constitutional limitations affecting Congress do not apply to the Philippines nor to its governing body, which may exercise all powers delegated by the Congress.

The Philippine Autonomy Act ("39" St. L. 545) provides "that no law shall be enacted in said Islands which shall deprive any persons of life, liberty or property without due process of law or deny to any person therein the equal protection of the laws."

It is true that this has been interpreted by this court in *Serra* v. *Mortiga,* 204 U. S. 470, 474, as extending to the Philippine Islands guarantees equivalent to the due process and equal protection clauses of the Federal Constitution. The connotation of due process, however, when applied to legislative acts depends on the body of existing law in the jurisdiction.

> *Murray v. Hoboken Land, etc., Co.,* 18 How. 272.
> *Brown v. New Jersey,* 175 U.S. 172.

The question whether the Act offends against the due process clause of the Philippine Bill of Rights, therefore, while it is to be

tested by substantially the same principles as have been applied in similar cases in this country, must be measured not as petitioners contend at page 16 of their brief by exactly the same considerations which have moved our courts in their decisions under the Fifth and Fourteenth Amendments, but rather with reference to the body of law in the Philippine Islands.

The Philippine Autonomy Act did not abrogate, but continued in effect the laws already in operation at the time of its enactment. The lower court in its opinion (R. 1198) refers to certain powers of the Collector of Internal Revenue to require books, returns, transcripts, etc., to be kept by merchants of various classes for the purpose of tax collection. Moreover, Article 33 of the Spanish Code of Commerce, continued in force in the Philippine Islands by the Autonomy Act, prescribes that all merchants shall keep certain specified books. It is submitted that these and other special provisions of the Philippine laws should be borne in mind in considering the arguments following.

B.

Any Injury or Hardship Caused by This Act Is Purely Incidental.

The statute in its terms is nothing more than a regulation of the method of carrying on one of the incidents of business. It forbids the doing of no business. It prohibits no lawful calling. Insofar as it deprives any merchants of liberty, it does so in its terms only by way of a regulation effecting at most an incidental injury to their business, and it does so in the exercise of a recognized governmental power. The petitioners' claim, that the Act in its operation would be so severe as practically to prevent them and many others from doing business, falls far short of being established by the record. It is submitted that the foregoing discussion of the facts of the case indicates not only that the petitioners' proof has failed to show the extent and gravity of the hardship which they allege will be produced by the Act 2972, but also that the weight of testimony goes to show first, that the hardship would be temporary and inconsiderable if the Act were

enforced at the present time and, second, that it would have been entirely negligible, had any effort been made in the two years which elapsed between the enactment and the effective date of the Act to prepare for compliance.

Act 2972 is a fiscal measure in aid of the administration of the tax laws. Any deprivation of liberty or property resulting from it, any hardship caused by its enforcement, would be purely incidental. An incidental deprivation of liberty or property, even of a grave kind, does not render unconstitutional an act in the exercise of the fundamental powers of the Government, such as the police power and, even more, the power of taxation.

Barbier v. *Connolly*, 113 U. S. 27.
Radice v. *New York*, 264 U. S. 292.

The foregoing cases become important because of the fact that Act 2972, in addition to being an exercise of the taxing power, also falls within the police power, because of its purpose to prevent frauds on the revenue.

That such incidental injuries as are relied on by the petitioners are not sufficient warrant for declaring unconstitutional an act in the exercise of an otherwise valid taxing power is indicated by *Brushaber* v. *Union Pacific Railroad*, 240 U. S. 1, and *French* v. *Barber Asphalt Paving Company*, 181 U. S. 324. Furthermore, in the case of *Packard* v. *Banton*, 264 U. S. 140, 145, this Court has indicated that confiscation of property would have to be patent before it would hold a statute contrary to the Fourteenth Amendment, if the limitation is an incident to the legislature's exercise of its police powers. This was a case in which it was claimed that the cost of complying with a certain regulation would be prohibitive and confiscatory. Of course, where the exercise of the police or taxing power is a mere subterfuge, the courts will look behind the form to the substance.

Child Labor Tax Case, 259 U. S. 20.
Dobbins v. *Los Angeles*, 195 U. S. 223.

The petitioners rely upon a number of cases in which interference by statute with the right of persons to engage in lawful occupations has been held invalid, but the interference in these

cases was direct, not incidental. The statute was aimed at the very thing which constituted the injury; its primary purpose incorporated the injury itself, and was not the exercise of either the taxing or the police power. Thus in *Pierce* v. *Society of Sisters*, 268 U. S. 510, the statute directly destroyed the appellant's right to earn a livelihood through conducting primary schools. In *Truax* v. *Raich*, 239 U. S. 33, the statute complained of forbade certain persons to hire more than 20 per cent of employees not qualified electors or native born citizens. The statute directly affected the liberty of persons in contracting for employment. The same thing was true in *Adams* v. *Tanner*, 244 U. S. 590, in which Mr. Justice Brandeis in a strong dissent urged that the public necessity of the Act was sufficient to support it, despite what the majority opinion considered a direct interference with the liberty of contract and freedom of occupation. *Meyer* v. *Nebraska*, 262 U. S. 390, and *Coppage* v. *Kansas*, 236 U. S. 1, dealt likewise with statutes which directly prohibited the following of a lawful occupation or directly infringed the individual's liberty to contract for employment.

The present case typifies the distinction drawn by this court. Act 2972 in its purpose and in its terms prohibits no lawful occupation, interferes with no right to engage in business in any lawful manner, prevents no contract for the keeping of books nor even requires that any books be kept. It does this not with any intent to prohibit, not with any purpose of obstruction, not with a design to interfere with lawful occupations or the manner of conducting them, but only with the intent to cure a grave defect in the exercise of the most fundamental power of Government—the power of taxation.

C.

The Requirement of Due Process Is Not a Limitation on an Otherwise Valid Exercise of the Power of Taxation.

In *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, Mr. Chief Justice White said (p. 24):

> "So far as the due process clause of the Fifth Amendment is relied upon, it sufficies to say that there is no

basis for such reliance, since it is equally well settled that such clause is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power and taking the same power away on the other by the limitations of the due process clause. [Citing cases.]"

The same rule as to the effect of the due process clause has been applied by this court in deciding that the Fourteenth Amendment was not designed to subvert the systems of general or special taxation erected by the various states.

French v. *Barber Asphalt Paving Co.* (supra), 181 U. S. 324.

III.

ACT 2972, AS LIMITED BY THE SUPREME COURT OF THE PHILIPPINE ISLANDS, DOES NOT OFFEND AGAINST THE EQUAL PROTECTION CLAUSE, EITHER IN LANGUAGE OR IN OPERATION.

A.

Neither the Wisdom of the Act, nor the Motives of the Legislature, Undisclosed in Its Language or Operation, Are Material Here.

The purpose of the Act is patent from the evidence in the record showing its necessity, and the history of its passage, as well as from the decision of the lower court. The record, moreover, is bare of proof that its purpose, as claimed by the petitioners, was to destroy the business of the Chinese merchants—bare even of proof that such was the motive of the Legislature at the time of its passage. It is doubtless true that the presence in the Philippines of a great number of merchants, Chinese and others, whose books were kept in language incomprehensible to the agents of the Bureau of Internal Revenue, was the impelling necessity for the Act, but if this be ground for a claim of unconstitution-

ality, then every act made necessary by the situation, circumstances, or conduct of any class of our population would likewise fall. The mere fact that a condition calling for statutory remedy is caused in large measure by a certain class of the population, does not tie the hands of the Legislature. Thus, in *Soon Hing* v. *Crowley*, 113 U. S. 703, it appeared that the Chinese population of San Francisco were largely responsible for a condition which brought about the enactment of a municipal ordinance prohibiting the washing or ironing of clothes between 10 P. M. and 6 A. M. or on Sundays, yet this Court sustained the constitutionality of that ordinance, despite the fact above-mentioned, and despite the contention that the ordinance in question was inspired by motives hostile to the Chinese. The Court said (p. 710):

> "There is nothing, however, in the language of the ordinance, or in the record of its enactment, which in any respect tends to sustain this allegation [that hostility to the Chinese was its motive]. And the rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the facts, or inferrable from their operation, considered with reference to the conditions of the country and existing legislaiton. * * * The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile."

The following sentence in the Court's opinion is significant:

> "And in the present case, even if the motives of the supervisors were as alleged, the ordinance would not thereby be changed from a legitimate police regulation, unless in its enforcement it is made to operate only against the class mentioned; and of this there is no pretense."

The above case is to be contrasted with *Yick Wo* v. *Hopkins*, 118 U. S. 356, in which the actual operation of an ordinance was held to deprive the complainant of the equal protection of the laws.

See also *Terrace* v. *Thompson*, 263 U. S. 197, in which a statute disqualified all aliens who had not in good faith declared their intention of becoming citizens of the United States, from holding any interest in land. This Law, like a similar law in California, was notorious as the "Anti-Japanese Act," yet the Court held its classification, based as it was on eligibility and purpose to naturalize, to be constitutional and not a deprivation of equal protection of the laws.

The record is bare, furthermore, of any suggestion that in the administration of Act 2972 there appeared or would appear any hostility to the Chinese or any other classes, or any discrimination against them. Indeed, the Supreme Court of the Philippine Islands, on pages 1200-1201 of the record, virtually promised that there would be no unfair treatment of the Chinese under this Act.

In view, then, of the familiar rules above stated, it is conceived that the numerous resolutions of Chambers of Commerce and other bodies, and other documents presented by the petitioners as exhibits in the record, and criticising the wisdom of Act 2972, are totally immaterial.

B.

The Requirement of Equal Protection Forbids, Not Classification, but Only Arbitrary Classification.

It is hard to conceive of any statute which to some extent does not involve a classification.

That classification is not forbidden is too elementary to require citation of cases. That a classification substantially identical in principle with that involved in Act 2972 is valid has been frequently held by the courts.

Soon Hing v. *Crowley* (supra), 113 U. S. 703.
Terrace v. *Thompson* (supra), 263 U. S. 197.
Porterfield v. *Webb*, 263 U. S. 225.

The above cases all involved a Chinese or Japanese population under facts strikingly similar in principle to those urged by the petitioner in the case at bar.

The distinction between statutes which are unconstitutional under the equal protection clause and those which are valid, seems to depend on whether the classification which they create is arbitrary and without foundation or reason.

Royster Guano Co. v. *Virginia*, 253 U. S. 412, 415.

In this case the language of Mr. Justice Pitney, in emphasizing the latitude of discretion allowed a legislature in the classification of property for purposes of taxation, and in the granting of partial or total exemptions upon grounds of policy, is significant. See also the language of this Court with reference to the power of taxation, and the necessary classifications thereunder, in *Barclay & Co.* v. *Edwards*, 267 U. S. 442, 450. The foregoing two cases, reaching opposite results upon the constitutionality of the statutes involved, illustrate the distinction which the respondents make.

See also *Packard* v. *Banton* (supra), 264 U. S. 140.

Such cases as *The King* v. *Lau Kiu*, 7 Hawaiian Rep. 489, are obviously distinguishable. In that case the statute forbade the keeping of books in any languages except Hawaiian, English, or any European language. Obviously, when books could be kept in Serbian, Lithuanian, the dialects of Russian, etc., etc., the statute could have no helpful relation towards the enforcement of any revenue laws; in fact, there was nothing to indicate that it was so intended, whereas, the Chinese in Hawaii, and the Japanese, were obviously and directly the object of attack. In any event, the persuasive effect of a decision by the Hawaiian Court is not great under the circumstances of that case. Moreover, the requirement in the Hawaiian statute, that no person who did not keep his books in the required languages could obtain the license requisite to do business, rendered that statute a direct interference with the liberty of the individual within the rule of *Meyer* v. *Nebraska* (supra), 262 U. S. 390.

The petitioners have cited no cases, and it is believed that they can cite none, in which a classification similar to that in the case at bar, has been held unconstitutional.

That the classification found in Act 2972 is a reasonable one, bearing a responsible relation to the purpose of the Act, can hardly be gainsaid. The Act, indeed, contains only a very limited measure of classification. Within its terms it is of absolutely universal application. It covers all merchants within the Philippine Islands, and that such a classification is reasonable is beyond cavil. In covering all merchants it uses an irreducible minimum of classification, below which the Legisltaure could not have gone, and at the same time have effectuated the purpose for which the Act was intended.

Moreover, that the operation of the Act bears harder upon one part of the persons affected by it than on the others,—that their circumstances are such that compliance would be a greater hardship on them than on others, is totally immaterial.

Soon Hing v. *Crowley* (supra), 113 U. S. 703.
Terrace v. *Thompson* (supra), 263 U. S. 197.

It cannot be too strongly emphasized that the test of a classification is not reasonableness, in the sense of wisdom or unwisdom, hardship or lack of it, but is arbitrariness,—lack of a reasonable basis for the classification.

Terrace v. *Thompson* (supra), 263 U. S. 197.
Royster Guano Co. v. *Virginia* (supra), 253 U. S. 412.
Packard v. *Banton* (supra), 264 U. S. 140.

A case particularly significant with reference to the taxing power is *Green* v. *Frazier*, 253 U. S. 233.

It being established on the one hand that an Act will not be held violative of equal protection because of unreasonableness in its terms or operation which falls short of being arbitrary, on the other hand it is equally clear that any reasonable basis for the classification is enough to make a statute constitutional. The court will not dissect a statute in order to discover to what precise extent it is actually calculated to carry out the Governmental purpose of police power or taxation which it was designed to effect.

Terrace v. *Thompson* (supra), 263 U. S. 197.

Act 2972 contains no classification beyond the inclusion of all merchants and the specification of certain languages. That an act affecting all merchants in a given territory does not constitute arbitrary classification is elementary; that the choice of languages is not an arbitrary one likewise seems obvious. English and Spanish are the official languages of the Islands. As to the native dialects, it is surely not unreasonable or arbitrary for the Government of the Philippine Islands to exert itself, in behalf of its own subjects, to the small extent required to examine their books in the native languages. The record shows how easy a matter this is. On the other hand, it is hardly reasonable to require the Philippine Government to serve the convenience of every foreigner doing business in the Islands by employing an accountant who can examine books in that foreigner's language. It should be emphasized again that the Act itself bears not only on the Chinese merchants but on Germans, Japanese, Syrians, Hindus and any other foreign merchants in the Islands. The mere fact that the Chinese form a large proportion of these foreign merchants and do a large proportion of the business of the Islands falls far short of making the Act a discrimination against them. It only goes to prove the greater necessity for the Act.

IV.

ACT 2972 AS LIMITED BY THE SUPREME COURT OF THE PHILIPPINE ISLANDS IS SUFFICIENTLY DEFINITE AND CERTAIN IN ITS REQUIREMENTS.

If the Act was indefinite as passed, it has been cured by the interpretation of the lower court, and there remains no constitutional question here.

> *Southeastern Express Company* v. *Robertson*, 264 U. S. 535.

In *Pierce Oil Co.* v. *Hopkins*, 264 U. S. 137, the appellants attacked a certain law requiring retailers of gasoline to collect from purchasers, in addition to the usual charge, the sum of

one cent per gallon. In answer to the argument of uncertainty and indefiniteness, Mr. Justice Brandeis said:

> "The argument that there inheres in the statute such uncertainty as to render it a nullity is answered by the fact that since the judgment was entered in the trial court all uncertainty has been removed by the decision of the highest court of the State in *Standard Oil Co.* v. *Brady*, 153 Ark. 114. There, the Act was construed as requiring sellers to collect and pay the tax only on such gasoline as they had reason to believe the purchasers from them will use in motors on the highways."

It hardly seems to need argument that the statute as interpreted by the Philippine Supreme Court is completely definite in its indication as to what books the taxpayer will be required to keep in the enumerated languages. The taxpayer can always have access to the regulations of the Bureau of Internal Revenue and will find no difficulty in determining when he is complying with the law and when he is not.

It would be neither possible nor desirable to designate specific books to be kept, by merchants doing many different kinds of business, in English, Spanish or one of the native dialects. As interpreted by the Supreme Court of the Philippines, the Act becomes as specific and as definite as it could reasonably be.

The Act as interpreted is no less definite than the various revenue acts passed by Congress.

> *Revenue Act of 1918, Public No. 254, 65th Congress, Section 1305.*
> *Revenue Act of 1921, Public No. 98, 67th Congress, Sections 1300 and 1303.*
> *Revenue Act of 1924, Public No. 176, 68th Congress, Section 1002.*
> *Revenue Act of 1926, Public No. 20, 69th Congress, Section 1102-(a).*

In all these Acts the wording is:

> "Every person * * * shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the Commissioner,

with the approval of the Secretary, may from time to time prescribe."

And even the regulations of the Bureau of Internal Revenue in this country are no more specific than the Act as interpreted by the Supreme Court of the Philippines.

Regulations 45, relating to income tax, etc., under the Revenue Act of 1918, Article 24.
Regulations 62 under Revenue Act of 1921, Articles 24 and 1711.
Regulations 65, relating to income tax under Revenue Act of 1924, Articles 24, 1321, 1611-18.

V.

THE TREATY BETWEEN THE UNITED STATES AND CHINA ASSURING TO CHINESE NATIONALS "MOST FAVORED NATION" TREATMENT HAS NO BEARING ON THIS CASE.

Article 3 of the treaty reads as follows:

> "If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its powers, to devise measures for their protection, and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty."

No argument made by the respondents herein implies that the rights of the petitioners are less because they are aliens and subjects of the Emperor of China.

The treaty, moreover, refers to Chinese "now either permanently or temporarily residing in the territory of the United States." There is no proof that these petitioners or any of the Chinese in the Islands were residing in the territory of the United States or in the Philippine Islands on November 17, 1880, the date of the Treaty.

The Treaty protects such Chinese as "meet with ill treatment at the hands of any other persons." It can hardly be presumed that an act of the Philippine Legislature would be classed as "ill treatment" intended by the Treaty.

The Treaty provides that for Chinese who are ill treated as above, "the Government of the United States will assert all its powers to devise measures for their protection and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens of the most favored nation, and to which they are entitled by treaty." The most that could be contended is that this treaty constitutes a moral obligation on the Congress of the United States to nullify, as it has authority to do, Act 2972 of the Philippine Legislature. Certainly, it has no relation to the constitutionality of that Act under the Philippine Bill of Rights or the Constitution of the United States. The petitioners' contention amounts to this: that the Supreme Court of the United States is bound by treaty to declare the Act unconstitutional.

There is no proof in the Record as to whether the right to keep one's books in one's own language is a right, privilege, immunity or exemption enjoyed by the citizens or subjects of any nation to which by treaty with the United States they are entitled.

Furthermore, the phrase "now either permanently or temporarily residing in the territory of the United States," written in 1880, when the Philippine Islands were not such territory, raises a serious question as to whether this treaty would be applicable in any event to the Philippines.

Petitioners cited the case of *Yick Wo* v. *Hopkins,* 118 U. S. 356, 369, as authority for the proposition that this treaty is applicable, but the case will not bear this construction. All that it holds is that the Chinese are entitled no less to the equal protection of the laws than American citizens. Moreover, it must be emphasized that although this Court in the *Yick Wo* case held an ordinance of the City of San Francisco unconstitutional, it did not so hold because it violated the equal protection clause. The reason for holding the ordinance unconstitutional was that it vested, without judicial review, arbitrary powers in administrative officers, in violation of the due process clause. It also appeared

that the administration of the ordinance, not the ordinance by its terms, was violative of the equal protection clause. Of course, if it should appear that the law is administered with hostility or discrimination against the Chinese, or against any other merchants of the Philippine Islands, a remedy exists under the principle laid down by this Court in *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441.

VI.

ACT 2972 IS A PROPER EXERCISE OF THE TAXING POWER AND OF THE POLICE POWER.

Sections 7 and 8 of the Organic Act of the Philippine Islands (39 Stat. 545) read in part as follows:

> "That the legislative authority herein provided for has power when not inconsistent with this Act to amend, alter, modify or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.
>
> "This power is specifically extended, with the limitations herein provided, as to the tariff and to all laws relating to revenue and taxation in effect in the Philippines."

These provisions of the Organic Act put into effect in the Philippines a rule similar to the familiar doctrine that no authority is necessary to enable state legislatures to pass whatever laws they deem proper so long as they avoid conflict with the Constitution.

The power of taxation, then, is fully vested in the Philippine legislature subject to the limitations of the Bill of Rights contained in the Philippine Autonomy Act, supra, and the power to tax is as fundamental as the police power. Historically, it is even superior. This has been reiterated by this Court in many cases since *McCulloch* v. *Maryland*, for example, *Loan Association* v. *Topeka*, 20 Wall. 655, 663; *Barclay & Co.* v. *Edwards*, 267 U. S. 442, 450.

CONCLUSION

In view, therefore, of the purpose served by the Act, the mischief it was designed to cure and its necessity both in aid of the collection of taxes and in guarding against frauds on the revenue; in view of the petitioners' failure to show that it deprived any person of property or liberty without due process of law, or that it constitutes arbitrary or even unreasonable discrimination; in view of its definiteness and of the fact that it does not even remotely conflict with any treaty between the United States and China, it is respectfully submitted that the Act is constitutional and valid.

Accordingly, the respondents respectfully submit that the judgment of the Supreme Court of the Philippines should be affirmed with costs.

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GUILLERMO B. GUEVARA,
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Lieut. Col., Judge Advocate.
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Attorney.

No. 823

Office Supreme Court,
FILED
APR 17 192
WM. R. STANS

In the Supreme Court of the United States.

OCTOBER TERM, 1925

YU CONG ENG and CO LIAM for themselves and for the benefit of all other persons similarly situated and affected,

Petitioners,

against

W. TRINIDAD, as Collector of Internal Revenue, EULOGIO P. REVELLA, as Fiscal for the City of Manila, and PEDRO CONCEPCION, as Judge of the Court of First Instance of Manila.

Respondents.

APPENDIX TO RESPONDENTS' BRIEF

BUREAU OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS.

OFFICE OF THE COLLECTOR.

CIRCULAR NO. 20.

MANILA, March 23, 1914.

To all internal-revenue officers and others concerned:

SUBJECT: *Regulations relating to the income tax imposed by section 2 of the Act of October 3, 1913, on corporations, joint-stock companies or associations, and insurance companies.*[1]

* * * * * * * *

Art. 182. No particular system of bookkeeping or accounting will be required by the Bureau. However, the business transacted by corporations must be so recorded that each and every item set forth in the return of annual net income may be readily verified by an examination of the books of account.

Art. 183. The books of a corporation are assumed to reflect the facts as to its earnings, income, etc. Hence they will be taken as the best guide in determining the net income upon which the tax imposed by this act is calculated. Except as the same may be modified by the provisions of the law, wherein certain deductions are limited, the net income disclosed by the books and verified by the annual balance sheet, or the annual report to stockholders, should be the same as that returned for taxation.

* * * * * * * *

JAMES J. RAFFERTY,
Collector of Internal Revenue.

Approved:
VICTORINO MAPA,
Secretary of Finance and Justice.

[1]Article numbers correspond to those appearing in Regulations No. 33 of United States Commissioner of Internal Revenue.

BIR 17314

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

DEPARTMENT OF FINANCE AND JUSTICE.

BUREAU OF INTERNAL REVENUE.

MANILA.

October 8, 1914.

SUBJECT: *Records of sales and receipts to be kept by schedule C taxpayers in English or Spanish.*

CIRCULAR LETTER NO. 467.

To all internal-revenue officers and others concerned:

1. *Promulgation.*—By authority of section 5 and section 6, sub-section (j) of Act No. 2339, the following regulations, relative to the records to be kept by merchants, manufacturers, printers, publishers, contractors, warehousemen, keepers of hotels and restaurants, common carriers, and all other persons subject to the percentage tax under the provisions of sections 34 to 44 of Act No. 2339, are published for the information and guidance of all concerned.

2. *Records of merchants and manufacturers.*—Every merchant and manufacturer subject to the tax imposed by section 40 of Act No. 2339 shall keep a day book, in which he shall enter in detail in *English or Spanish* every day each of his sales that amount to p50.00 or more, and the daily aggregate amount of sales that are less than p50.00 each. Every merchant and manufacturer shall before using said book serially number its pages in a permanent and legible manner, and shall present it to an internal-revenue agent or officer for approval. Cash sales and credit sales shall be entered separately in this book within the period of twenty-four hours following the date on which same are made. If on any date no sales are made, then that fact shall be noted in the book

within the said twenty-four hours under the corresponding date. The day book prescribed in this paragraph shall be kept substantially as shown in the model below:

January 1, 1915.

Article	Quantity	Amt. Cash	Amt. Credit	Name	Address
Rice	100 Cavans	p5,000.00	p1,500.00	Occidental Rice Co.,	Manila
Tobacco	50 quintaels	300.00		La Bolivia	Illilo
Flour	200 sacks		800.00	El Toro,	Cebu
Petty Sales		400.00	700.00		
Total		p5,700.00	p3,000.00		

January 2, 1915.

3. *Printers, publishers, contractors, common carriers, etc.*—Each printer, publisher, contractor, warehouseman, proprietor of a dockyard, keeper of a hotel or restaurant, keeper of a livery stable or garage, transportation contractor and common carrier by land or water, and so forth, subject to the tax imposed by sections 42, 43 and 44 of Act No. 2339, shall keep a day book in which he shall enter in detail, *in English or Spanish*, each amount of money received in the conduct of his business. Before being used for said purpose, the pages of the book must be numbered serially in a permanent and legible manner, and the book itself presented to an internal-revenue agent or officer for approval. In this book the cash receipts of the owner thereof shall be entered under the corresponding date within the twenty-four hours next following the date the money was received. If no money is received on any day, then that fact shall be noted in the book within the said twenty-four hours under the corresponding date.

4. *Exceptions to above regulations.*—Any person or firm subject to a percentage tax, who keeps regular commercial books of account *in English or Spanish* containing all the data required to be entered in the books herein described, is hereby exempted from the requirements contained in paragraphs 2 and 3 hereof.

5. *Approval of book.*—The approval by the internal-revenue agent or officer of any book to be used for keeping the record of sales or receipts as required in paragraphs 2 and 3 hereof, shall be

evidenced by his indorsement on the inner side of the binding thereof in the following form:

"Approved for the purposes of Bureau of Internal Revenue Circular Letter No. 467.

.....

.....191..... Internal-Revenue Agent or Officer."

6. *Books open to inspection of internal-revenue officers.*—All the record books herein described, including regular commercial books of account, shall be kept at all times in the place of business of the taxpayer, subject to inspection by any internal-revenue officer or agent, and upon demand shall immediately be produced and submitted to such inspection. All entries in said book shall be made in ink in a neat and legible manner, and all columns shall be correctly added at the close of each month and the totals entered at the foot of the respective columns.

7. *Penalty for violations.*—Any violation of or failure to comply with any of the provisions contained in this circular letter will subject the guilty person to prosecution under the provisions of section 185 of Act. No. 2339, which provides punishment by a fine of not more than p300, or by imprisonment for not more than six months, or both, in the discretion of the court.

8. *Repealing clause.*—Circular Letter No. 298 and all other regulations and instructions in conflict herewith, are hereby repealed. Internal-revenue officers will give wide publicity to the provisions of this circular letter at the earliest practicable date.

9. *Date of taking effect.*—These regulations shall be in full force and effect on and after January 1, 1915.

JAMES J. RAFFERTY,
Collector of Internal Revenue.

Approved:
VICTORINO MAPA,
Secretary of Finance and Justice.

BIR 19864

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

BUREAU OF INTERNAL REVENUE.

MANILA.

January 11, 1915.

SUBJECT: *Regulations relative to the tax on output of mines.*

CIRCULAR LETTER NO. 476.

To all internal-revenue officers and others concerned:

The following regulations relative to the collection of the ad valorem tax on the output of mines are hereby published for the information and guidance of internal-revenue officers and others concerned:

* * * * * * * *

Sec. 5. *Records to be kept by persons subject to the tax on output of mines.*—Every person or firm subject to the payment of the ad valorem tax on the value of the output of mines shall keep a record in which he shall enter in detail, in English or Spanish, all sales of mining products made by him, the amount of tax paid, the amount of transportation or other charges paid by him, the quantity and kind of output, value of same, and such other information as may be necessary to ascertain the value of the mining products at the mine. Every such person shall, before using said book, serially number its pages in a permanent and legible manner, and shall present it to an internal-revenue agent or officer for approval. All transactions shall be entered within twenty-four hours after same are made. *Provided*, That any person or firm subject to the tax on the output of mines who keeps regular commercial books of account, in English or Spanish, containing all of the data required to be entered in the books above described, is hereby exempted from keeping the above prescribed record.

The record books herein prescribed, including regular commercial books of account, shall be kept at all times in the place of business of the taxpayer, subject to inspection by any internal-revenue officer or agent, and upon demand shall immediately be produced and submitted to such inspection. All entries in said book shall be made in ink or indelible pencil in a neat and legible manner, and all columns shall be correctly added at the end of each month and the totals entered at the foot of the respective volumns.

* * * * * * * *

JAMES J. RAFFERTY,
Collector of Internal Revenue.

Approved:
VICTORINO MAPA,
Secretary of Finance and Justice.

BIR 19918

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

BUREAU OF INTERNAL REVENUE.

MANILA.

January 13, 1915.

SUBJECT: 1. *Tax on motor spirits and mineral oils;* 2. *Retail leaf tobacco dealers;* 3. *Fixed and percentage taxes under Schedule "C";* 4. *Butchers and bakers no longer exempt;* 5. *Imported tobacco products;* 6. *Error in Spanish translation;* 7. *Retail tuba dealers;* 8. *Daily sales books.*

CIRCULAR LETTER NO. 477.

To all internal-revenue officers and others concerned:

* * * * * * * *

2. *Retail leaf tobacco dealers.*—Payment of the tax imposed by paragraph (m) of section 45 of Act No. 2339, as amended,

on retail leaf tobacco dealers will be indicated by the issuance of a B-14 license. The payment of this tax permits the sale of leaf tobacco at retail only at a fixed stand and at the place shown in the license. It does not cover the transactions of peddlers. If a man desires to sell leaf tobacco in more than one place he must pay the tax for each such place.

Before issuing a B-14 license to any person desiring to sell leaf tobacco at retail, the deputy provincial treasurer shall require the applicant to provide himself with a balance scale graduated in grams and capable of weighing up to one kilo, and a book in which the following data must be entered:

(1) On the debit side must appear the date and weight in kilos of leaf tobacco purchased, and the name and address of the person from whom purchased.

(2) On the credit side entries must be made showing the date of each sale, the name and address of the buyer, and the weight in grams of the leaf tobacco sold. One kilo of leaf tobacco, which is the estimated quantity that an ordinary family will consume during one month, is the maximum amount that a retail dealer may sell at any one time to any one consumer and preserve his status as a retail dealer.

* * * * * * * *

8. *Daily sales book*—Paragraph 2 of Circular Letter No. 467 has been misinterpreted by a number of internal-revenue officers to mean that all merchants and manufacturers must keep a book in the form indicated by the model in said paragraph 2. While it is required that every merchant and manufacturer subject to the Schedule "C" tax shall enter in detail every day each of his sales that amounts to p50 or more and the daily aggregate amount of sales that are less than p50, if the merchant never makes a sale of p50 he has only to enter the daily aggregate amount of his sales, and in such a case the daily sales book formerly used is sufficient.

JAMES J. RAFFERTY,
Collector of Internal Revenue.

BIR 22227

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

BUREAU OF INTERNAL REVENUE.

MANILA.

February 23, 1915.

SUBJECT: *Regulations to govern retail leaf tobacco dealers engaging in business on the Visaya Islands, Mindoro and Mindanan.*

CIRCULAR LETTER NO. 493.

To all internal-revenue officers and others concerned:

* * * * * * * *

6. *Records and equipment of retail leaf tobacco dealers.*—No records need be kept by holders of B-14 licenses or L-5 permits nor are they required to be provided with scales, unless they choose to sell by weight.

* * * * * * * *

V. CONCEPCION,
Acting Collector of Internal Revenue.

Approved:

VICTORINO MAPA,
Secretary of Finance and Justice.

BIR 25325

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

BUREAU OF INTERNAL REVENUE.

MANILA.

August 19, 1915.

SUBJECT: *Additional provisions to Circular Letter No. 467 as amended by Circular No. 488.*

CIRCULAR LETTER NO. 509.

To all internal-revenue officers and others concerned:

Paragraph 4 of Circular Letter No. 467, as amended by Circular Letter No. 488, is further amended by adding the following provisions:

(c) Any merchant subject to the percentage tax under sections 40, 42 and 43 may, upon application to the Collector of Internal Revenue, through the Supervising Internal Revenue Agent of the district where his license was issued, be relieved from the requirement of keeping the records prescribed in these regulations, (Circular Letter No. 467 as amended), if in the opinion of said Supervising Agent the gross sales or receipts of said merchant will not exceed two hundred (p200.00) pesos in the quarter.

Upon receipt of said application and if same merits approval, the Supervising Agent will immediately note upon the license of the applicant "Records waived ....., 19...." and sign name.

In issuing succeeding licenses, the deputy provincial treasurer will transcribe to the new license the note made by the Supervising Agent on the old license including the signature of the Supervising Agent making the original entry.

(d) In the case of all persons, who by these regulations are exempted from the keeping of records of sales and receipts, the returns required by law shall consist of a statement on the coupon

corresponding to each quarter, that the gross sales or receipts for the preceding quarter did not exceed two hundred pesos (p200.00).

If at any time the gross sales or receipts of any taxpayer shall exceed two hundred pesos in any quarter, the exemption ceases and records must be kept beginning the next succeeding quarter.

(e) The Supervising Agent will not forward to the Collector of Internal Revenue any such applications for exemption unless the taxpayer's request is denied.

JAMES J. RAFFERTY,
Collector of Internal Revenue.

Approved:

VICTORINO MAPA,
Secretary of Finance and Justice.

BUREAU OF INTERNAL REVENUE.

REGULATIONS No. 3.

REGULATIONS AND INSTRUCTIONS GOVERNING THE BUSINESS OF DISTILLERS AND RECTIFIERS.

[1916]

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SEC. 6. *Register and stamp requisition books for manufacturers.*—The Collector of Internal Revenue shall cause to be prepared a sufficient number of manufacturers' register books and shall from time to time supply provincial treasurers with such numbers of said books as may be required in each locality by manufacturers of distilled spirits. These official books are five in number, and are known as follows: B. I. R. Form No. 14, Official Register Book, Distilled Spirits; this book is used in establishments where spirits are produced by original distillation only, and neither rectification nor compounding is engaged in. B. I. R. Form No. 215, Official Register Book, Crude Spirits; this is the auxiliary book "A" and is used in establishments

where rectifying or compounding is engaged in. B. I. R. Form No. 217, Official Register Book, Rectified Spirits; this is the auxiliary book "B" and is used in establishments where rectifying is engaged in. B. I. R. Form No. 216, Official Register Book, Compound Liquors; this is the auxiliary book "C" and is used in establishments where compounding of liquors is engaged in. B. I. R. Form No. 329, Official Register Book, Distilled Spirits, Sales Account; this book is used in lieu of the Official Register Book, Distilled Spirits (B. I. R. Form No. 14) mentioned above, in establishments where rectifying or compounding is engaged in. Whenever any manufacturer shall have qualified himself as such by executing a bond and registering his factory, and shall have complied with all the other requirements for engaging in such business as are prescribed in the Internal Revenpe Law and in these regulations the internal-revenue agent within whose district the manufactory is situated shall deliver to said manufacturer one official register book and the official auxiliary register books which the nature of the business requires and a stamp requisition book (B. I. R. Form 60 or 61).

All official books used by a distiller must be kept on the distillery premises and open to inspection by any internal-revenue officer at all times of day or night.

(a) Installation of register books.—There shall be entered on the fly leaf of the register book at the time of delivery to each manufacturer the date of delivery of the book; the name of the owner of the manufactory and of the manager thereof and a certificate signed by the owner or manager, attested by the internal-revenue agent delivering the book, to the effect that all the provi-sions of the law and regulations governing the operations of his manufactory, the use of said register, and the manner of the shipment of goods from the manufactory have been fully explained to such manufacturer or manager, and that he fully understands the same and knows the penalties and punishments imposed for the disregard thereof. One copy of this certificate shall be forwarded to the Collector of Internal Revenue, one shall be forwarded to the provincial treasurer through the deputy provincial treasurer, and one shall remain permanently in the register book.

(*b*) *Names of authorized managers to be filed.*—As manufacturers are permitted to authorize one or more persons to act as manager or managers of their business, they shall file with the deputy provincial treasurer of the municipality in which the manufactory is situated written statements containing the names of the persons authorized to sign, in their names, stamp requisitions and the entries in their register books, tax-receipt books, and transcript sheets.

(*c*) *Entries to be made in register book and transcripts to be rendered.*—At the time of the original assessment of each and every manufactory there shall be entered on the "debit" side of each register book, as the first item therein and in the proper columns, a description of all stocks of goods subject to the tax on hand on the date of said assessment; and each manufacturer shall, from day to day, or on such days as his manufactory is in operation, enter in said register on the "debit" side and in the proper columns thereof the day and number of hours worked, the thermometer and hydrometer readings, with resultant percentage of proof liters, and a statement of the denominative value and serial number of each stamp purchased on each day and the total value thereof; and each manufacturer shall at the time of any removal of goods enter in his register book on the "credit" side thereof and in the proper columns a full description of said goods, to include the day and hour of removal, the tax-receipt number, the serial numbers of the packages, the contents of each removal (i. e., the quantity removed under each tax receipt) in both gauge and proof liters, the total value and place where purchased of stamps affixed to the tax receipt, and the name of the consignee and his address. Such entry may be made in the register book from the tax receipt not later than noon of the day following such removal. In case a manufactory has been closed for one or more days, entry shall be made in the register books, "Factory closed from ..... 191.... to ..... 191...." This entry shall be made immediately upon reopening the factory for business. Each manufacturer shall sign his name opposite each entry made, whether on the "debit" or "credit" side as aforesaid in his register book and shall at the foot of each page of his register and auxiliary register books certify to the

truth and completeness of all entries made thereon at the time the page is completed. Each manufacturer shall promptly at the end of each month and not later than the fifth day of the next succeeding month make and transmit to the deputy provincial treasurer of the municipality within which his manufactory is situated, a true and exact transcript of all entries made on both the "credit" and "debit" sides of his register book and auxiliary register books during the month last past, including all entries made by an internal-revenue officer, and shall strike a balance in said books and on said transcript sheets which shall show the balance of stock on hand, if any. Said balance of stock shall be carried over as the first entry for the next succeeding month on the "debit" side of said books. Each manufacturer shall at the foot of each transcript sheet certify that the entries thereon are true and correct, and are exact copies of the entries contained in the corresponding register books. The transcript forms provided for above are identical in form with the debit and credit pages of the manufacturers' register books and will be supplied by the Collector of Internal Revenue to manufacturers through the respective deputy provincial treasurers. Upon receipt of the completed transcript sheets from manufacturers deputy provincial treasurers shall forward same by first mail to the Collector of Internal Revenue, through the office of the provincial treasurer.

(*d*) *Distillery register and auxiliary register books.*—Each distiller and rectifier shall keep such official auxiliary register books as the nature of his operations may require. A raw material auxiliary register book and auxiliary register books to be known as "A," "B" and "C" shall be kept in the manner herein prescribed.

(*e*) *Raw material auxiliary register.*—Debit will show quantity and kind of raw material received into the distillery daily and water and other materials added thereto. Credit will show quantity and kind of raw material used for charging stills. Additional columns will show number of proof liters produced daily and the proportion of alcohol produced to raw material used.

(*f*) *Book "A" debit.*—Under the head "Produced by original distillation" will be entered daily all crude spirits, in gauge and proof liters, with hydrometer and thermometer readings, pro-

duced in the distillery. In the proper columns will be entered the date, the number of stills operated, and the number of hours worked. Under the head "Received from other distilleries" will be entered the schedule, paragraph, and assessment numbers of the distilleries from which any spirits are received, the number of the tax receipt, the actual quantity received in gauge and proof liters, with hydrometer and thermometer readings, and the loss or gain under their respective headings. Under the head "Returned for distillation" will be entered all spirits which have been transferred to the "B," "C," or sales account which for any cause it may be necessary to redistill, the entry to be identified by the proper reference number, and to show the grade and temperature, and quantity in gauge and proof liters.

(*g*) *Book "A" credit.*—Under the three credit headings, "Transferred for rectification," "Transferred for compounding liquors," and "Transferred to sales," shall be entered the transfers to the "B," "C," and Sales Account registers, giving the date of transfer, hydrometer and thermometer readings, and the quantity in gauge and proof liters. Entries under each heading should be numbered consecutively, beginning each month with No. 1. These numbers will accompany the amounts transferred to the debit side of the proper account. There shall be added to such consecutive number the letter "A" to identify the book from which spirits were transferred; thus: A-1, A-2, etc., should appear on the debit entry in the book "B," or "C," or sales book, of amounts transferred from book "A."

(*h*) *Book "B" debit.*—In the column headed "original distillation" will be entered daily all spirits produced by a machine that produces rectified alcohol in one single process. In the column headed "Produced from crude spirits, original," will be entered rectified spirits produced otherwise than by continuous process. Losses will be the difference between the number of proof liters transferred from "A" book and those produced by the rectification thereof. Under the heading "Produced from change of grade" will be entered the number of gauge and proof liters of spirits produced by the addition of water to spirits in the same account.

(*i*) *Book "B" credit.*—The heading "Returned for redistillation" is self-explanatory; spirits so returned will be taken up as a debit in book "A" and identified by the letter "B" and the proper consecutive number. Spirits returned for reducing grade will, after water has been added, be taken up on the debit side of book "B," in the column headed "Produced from change of grade." Transfers for compounding will be debited in book "C" in the column headed "Used in compounding," and there identified by the letter "B" and the proper consecutive number. Transfers to sales will be debited in sales book and there identified by the letter "B" and the proper consecutive number.

(*j*) *Book "C" debit.*—Under the heading "Spirits received" will be entered the amount of crude and rectified spirits received by mixers who have no "A" or "B" books; schedule, paragraph, assessment, and tax-receipt numbers shall also be entered. Under the heading "Used in compounding liquors" the amount of crude or rectified spirits credited from books "A" and "B" will be entered with the letter "A" or "B" and consecutive number, according to the account from which the entry came; the kind of liquor to be produced, the ingredients, and the number of gauge liters of water added will be entered in their respective columns. Under the heading "Produced" the number of gauge and proof liters produced will be entered and the loss or gain in proof will be shown under the heading "In compounding."

(*k*) *Book "C" credit.*—Under the heading "Transferred for sales" will be entered all compound liquors transferred to the sales book. Each debit entry in the sales book will be identified by the letter "C" and the proper consecutive number.

(*l*) *Sales book debit (official register).*—Debit entries in the sales account will include all crude and rectified spirits and compound liquors prepared for sale. Each entry will, in the column headed "Number of hours worked," be identified by number and letter "A," "B," or "C," according as it comes from book "A," "B," or "C." All stamps purchased, with their serial numbers and the town where purchased, will also be entered, and the initials of the owner or manager will be signed opposite each debit entry.

(*m*) *Sales book credit.*—On the credit side of the sales account the following data will be shown: Date and hour of removal, tax-receipt number, inclusive serial numbers of packages, number of gauge and proof liters removed, amount of tax, town where stamps were purchased, name and address of consignee. Each credit entry will be signed by the owner or manager. When the official register (sales book) is also used as a production register, the number of hours worked each day will be entered in the column provided for that purpose.

(*n*) *Stamp requisitions.*—All internal-revenue stamps for use in the payment of taxes by manufacturers under Schedule "A" must be purchased on a stamp requisition form (B. I. R. Form No. 60 or 61) made out in duplicate by the manufacturer. The deputy provincial treasurer shall forward one copy of the said form, with the serial numbers and denominative values of stamps sold properly filled in, to the Bureau of Internal Revenue with his report of stamps sold. The other copy shall remain on file in the office of the deputy provincial treasurer.

(*o*) *Books required where taxpaid spirits are compounded.*—The Internal Revenue Law provides that if a person engages in the rectification or compounding of spirits on which the specific tax has been paid, any liquors produced exclusively therefrom shall not be subject to any further specific tax. A person authorized to engage in the compounding of this class of spirits, even though he rectify or compound non-taxpaid spirits at the same time, shall be required to keep the auxiliary register book "C" and the official register book, sales account, above prescribed, exclusively for recording his operations with the taxpaid spirits used by him. These books shall be given a special A-1 assessment number, which in the case of persons engaged in the rectification or compounding of non-taxpaid spirits shall be the same as their other A-1 assessment number with the letter "A" following: thus, A-1-777A. The books shall be installed and the entries made therein as set forth in the preceding subsections hereof.

SEC. 7. *Manufacture of imitation wines by rectifiers.*—A person desiring to engage in the manufacture of imitation wines by the compounding of distilled spirits with other substances shall be

required to pay the privilege tax as a rectifier and comply with the same requirements generally as a rectifier.

(*a*) *Books to be kept by manufacturers of imitation wines.*—A manufacturer of imitation wines will operate under the schedule and paragraph A-7. Each such manufacturer shall keep an official A-7 register book and auxiliary register book. The auxiliary register book shall be the same in form as the auxiliary register book "C" hereinbefore provided for rectifiers, and shall be kept in the same manner. The entries made in the column headed "Transfer for Sales" shall be dated, given a consecutive number, and transferred to the debit side of the A-7 official register book.

(*b*) *Debit entries in A-7 register book.*—The debit entry will show the aggregate daily transfers, the consecutive number of the entry (which will be shown in the column headed "No. of Hours Worked"), the quantity in gauge liters and the class; i. e., imitation wines containing fourteen per cent of alcohol or less shall be entered in the column headed "8 Cvos. Class," those containing more than fourteen per cent but not more than twenty-five per cent of alcohol shall be entered in the column headed "15 Cvos. Class," and imitation sparkling wines shall be entered in the column headed "P1 Class." Imitation wines containing more than twenty-five per centum of alcohol are taxable as distilled spirits, and therefore are nowhere taken up in the A-7 register books. The debit side will also show in the corresponding columns the denominative value, serial numbers, and total value of internal-revenue stamps purchased each day.

(*c*) *Credit entries in A–7 register book.*—On the credit page of the official A-7 register book shall be entered the date, hour, tax-receipt number serial numbers of packages, and quantity in gauge liters (entered separately under each class), of the articles removed under each tax receipt, the value of the stamps affixed to the receipt, and the name and address of the consignee. Each entry shall be signed in the column at the right of the page by the owner or his authorized manager. As soon as a page in the register book is completed, whether debit or credit, a balance will be made and carried forward to the next page, and the certificate at the bottom of each page signed by the owner or manager.

(*d*) *Transcript sheets, A-7.*—Manufacturers of imitation wines shall submit a transcript sheet within the same time and in the same manner as is hereinbefore required of rectifiers.

(*e*) *Tax receipts.*—Every removal shall be covered by an official tax receipt showing the date and hour of removal, name and address of the consignee, quantity in gauge liters of each class of imitation wines removed, and shall bear the proper amount of internal-revenue stamps in payment of the specific tax. In all respects A-7 tax receipts shall be issued, treated, and handled in the same manner as tax receipts are required to be issued, treated, and handled in the case of distilled spirits.

SEC. 8. *Delinquency and stocktaking records in register books.*—There shall be pasted securely in the center of the inside back cover of each Schedule "A" register book a stout paper envelope, with ungummed flap turned outward, in which shall be kept a form, (B. I. R. Form No. 409) prepared for use as an index and record of delinquency cases and instructions or warnings given the holder of the register book. The entries on this form shall be made by an internal-revenue officer, dated and signed both by the officer making same and by the owner or manager of the establishment. Each such entry shall contain the following information: If a delinquency case, the number of the case with a brief statement of the offense committed; in the case of instructions or warnings, a brief statement of the subject and substance thereof. Whenever an agent takes account of stock in a factory, he shall likewise enter a brief statement of the results thereof in this record.

SEC. 9. *Completion of register books.*—When all pages in an official register book have been filled, the manufacturer shall secure a new book from the provincial treasurer. The balance in the completed register book shall thereupon be carried forward to the new one. The delinquency record will also be removed from the completed register book by an internal-revenue agent or agent's assistant and transferred to the new one, and the following notation made in the old book:

"Delinquency record transferred to second (third, fourth, etc.) book, ... 191....

"

"*Internal Revenue Agent.*"

Each person subject to a specific tax will be held responsible for the proper preservation of all completed register books and of all delinquency records and shall hold same subject to the call of any internal-revenue officer. When any such person retires from business he shall secure a certificate, made by an internal-revenue officer on the last used page of his register, that all transcript sheets have been duly rendered and the register book properly closed.

SEC. 10. *Payment of the tax to be made by affixture of internal-revenue stamps to tax receipts.*—The payment of all internal-revenue taxes on distilled spirits, rectified or manufactured liquors, wines, and imitation wines, manufactured and removed from the place of production or manufacture for sale or consumption in the Philippine Islands, shall be made at the time of such removal by the purchase and affixture of internal-revenue stamps to official tax receipts, and shall be further indicated by the affixture of an official taxpaid label to each container of distilled spirits, rectified or manufactured liquors, wines, or imitation wines so removed.

(*a*) *Issuance of tax-receipt books.*—The Collector of Internal Revenue will cause to be prepared a sufficient number of manufacturers' tax-receipt books, B. I. R. Form No. 5, which will be supplied to manufacturers by provincial or deputy provincial treasurers and entries made on the fly leaf in the same manner as provided in section 6 (*a*) hereof for official register books. The tax receipts shall be official or public records or documents. These tax receipts shall be numbered consecutively from one to fifty in the first book delivered to each manufacturer, fifty-one to one hundred in the second book, and so on indefinitely for all subsequent tax-receipt books required by each manufacturer.

(*b*) *Contents of tax receipts.*—The tax receipts shall contain the following data: Date and hour of removal; name of consignee; his address—barrio, or street and number, town, and province—(distillers will require each intending purchaser to give his full address); serial numbers of the packages; permanent barrel or tank numbers, if barrel or tank is used; number and kinds of packages; class of liquor; quantity in gauge and proof liters; hydrometer and thermometer readings and resulting

percentage of proof; the amount of the tax, and a certificate to be signed by the owner or manager of the manufactory as to the truth and completeness of all entries made on the tax receipt.

(*c*) *Execution of tax receipts and process of removal.*—Before any manufacturer shall remove any distilled spirits, rectified or manufactured liquor, wines or imitation wines from the manufactory premises or from any internal-revenue bonded warehouse he shall securely attach to each package an official taxpaid label or tag, bearing his schedule, paragraph, and assessment numbers, and the number of the next blank tax receipt in his book, and shall make proper entry in all of the spaces of the blank tax receipt, and shall sign said receipt; he shall affix stamps in the amount of the tax due on the goods listed on the tax receipt securely and without lapping in the vertical column provided for stamps, shall cancel each stamp by writing or stamping the date across same and immediately above the serial number, in such a manner that part of the writing or stamping shall be on the stamp and part on the tax receipt, and that the serial number thereon shall not be rendered illegible or obliterated.

SEC. 11. *Completed tax-receipt books.*—Schedule "A" tax receipts in the hands of a manufacturer shall be taken up by the internal-revenue agent when all the receipts in a book have been used. Notation of the fact that the tax-receipt book has been taken up shall be made in the delinquency index by the agent in the following form: "Tax-receipt book of A-1-....., Nos. ..... to ..... taken up ....., 191....," to which the agent will sign his name. These books shall be turned over to the deputy provincial treasurer, who will forward same through the provincial treasurer to the Collector of Internal Revenue; *Provided, however,* That in the discretion of the internal-revenue agent in charge of the district in which the manufactory is located manufacturers may be required to forward these completed books direct to the deputy provincial treasurer, who will receipt for same in the manner provided above.

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JAMES J. RAFFERTY,
Collector of Internal Revenue.

Approved:

VICTORINO MAPA, *Secretary of Finance and Justice.*

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

DEPARTMENT OF FINANCE.

MANILA, August 31, 1920.

SUBJECT: *Amendments to Administrative Orders Nos. 42, 53 and 56, Regulations Nos. 3 and 4 and Circular No. 16.*

ADMINISTRATIVE ORDER NO. 60.[1]

To all internal-revenue officers and others concerned:

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8. Subsections (*b*) and (*c*), of section 6, Regulations No. 3, are amended so as to read as follows:

(*b*) *Names of authorized managers to be filed.*—As manufacturers are permitted to authorize one or more persons to act as manager or managers of their business they shall file with the deputy provincial treasurer of the municipality in which the manufactory is situated *a power of attorney in favor of the person or persons* authorized to sign, in their names, stamp requisitions and the entries in their register books, tax-receipt books, and transcript sheets. This intrument shall be forwarded to the Bureau of Internal Revenue by the said deputy.

(*c*) *Entries to be made in register books and transcripts to be rendered.*—At the time of the original assessment of each and every manufactory there shall be entered on the "debit" side of each register book, as the first item therein and in the proper columns, a description of all stocks of goods subject to the tax on hand on the date of said assessment; and each manufacturer shall, from day to day, or on such days as his manufactory is in operation, enter in said register on the "debit" side and in the proper columns thereof the day and number of hours worked, the thermometer and hydrometer readings, with resultant percentage of proof liters, and a statement of the denominative value and serial number of each stamp purchased on each day and the total value thereof; and each manufacturer shall at the time of any removal of goods enter in his register book on the "credit" side thereon and in the proper columns a full description of said goods, to include the day and hour of removal, the tax-receipt number, the serial numbers of the packages, the contents of each removal (i. e., the quantity removed under each tax-receipt) in both gauge and proof liters, the total value and place where pur-

[1]Promulgated September 2, 1920, XVIII Off. Gaz. 54.

chased of stamps affixed to the tax-receipt, and the name of the consignee and his address. Such entry may be made in the register book from the tax-receipt not later than noon of the day following such removal. In case a manufactory has been closed for one or more days, entry shall be made in the register books, "Factory closed from ....., 192... to ....., 192..." This entry shall be made immediately upon reopening the factory for business. Each manufacturer shall sign his name opposite each entry made, whether on the "debit" or "credit" side as aforesaid in his register and auxiliary register books certify to the truth and completeness of all entries made thereon at the time the page is completed. Each manufacturer shall promptly at the end of each month and not later than the *eighth* day of the next succeeding month make and transmit to the deputy provincial treasurer of the municipality within which his manufactory is situated, a true and exact transcript of all entries made on both the "credit" and "debit" sides of his register book and auxiliary register books during the month last past, including all entries made by an internal-revenue officer, and shall strike a balance in said books and on said transcript sheets which shall show the balance of stock on hand, if any. Said balance of stock shall be carried over as the first entry for the next succeeding month on the "debit" side of said books. Each manufacturer shall at the foot of each transcript sheet certify that the entries thereon are true and correct and are exact copies of the entries contained in the corresponding register books. The transcript forms provided for above are identical in form with the debit and credit pages of the manufacturers' register books and will be supplied by the Collector of Internal Revenue to manufacturers through the respective deputy provincial treasurers *to whom said transcript sheets shall be presented before the expiration of the eighth day of the next succeeding month. Before signing them, the local deputy provincial treasurer shall insert the date of presentation of the transcript sheets, after which the distillers shall forward them direct to this office.*

9. Subsections (*b*) and (*c*) of section 10, Regulations No. 4, are amended so as to read as follows:

(*b*) *Monthly transcripts to be rendered.*—Each manufacturer shall promptly at the end of each month and not later than the *eighth* day of the next succeeding month make and *present* to the deputy provincial treasurer of the municipality within which his manufactory is situated, a true and exact transcript of all entries made on both the "credit" and "debit" sides of his register books and auxiliary register books during the month last past, and shall strike a balance in each such book and on said transcript sheets, showing the balance of stock on hand, if any, and said balance of stock shall be carried over as the first entry for the next succeeding month on the "debit" side of said register book. Each manufacturer shall at the foot of each transcript sheet certify to the truth and correctness of all of the en-

tries therein, and that they are exact copies of the original entries contained in his register book. When any internal revenue officer is required to make entries of any kind in an official register book or other class of book for which transcript sheets are required to be rendered, such entries shall be made in a very legible manner and the manufacturer or dealer shall make a correct copy of same on his transcript sheets before sending them in at the end of the month. The transcript forms provided for above shall be identical in form with the debit and credit pages of the manufacturers' register books and will be supplied by the Collector of Internal Revenue to manufacturers through the respective deputy provincial treasurers *to whom said transcript sheets shall be presented before the expiration of the eighth day of the next succeeding month. Before signing them, the local deputy provincial treasurers shall insert the date of presentation of the transcript sheets, after which the manufacturers shall forward them direct to this office.*

(*c*) *Names of authorized managers to be filed.*—As manufacturers are permitted to authorize one or more persons to act as manager or managers of their business, they shall file with the deputy provincial treasurer of the municipality in which the manufactory is situated *a power of attorney in favor of the person or persons* authorized to sign, in their names, stamp requisitions and the entries in their official register books and auxiliary register books and the entries in their transcript sheets. *This instrument shall be forwarded to the Bureau of Internal Revenue by the said deputy.*

10. Sections 12 (*a*), 19, 20 (*d*), and 20 (*e*), all of Regulations No. 4, as amended by Administrative Order No. 47, are hereby amended so as to read:

SEC. 12. (*a*) *Official bale book.*—The official bale book is identical in arrangement with the wholesale leaf tobacco dealer's official register book. It shall be installed in *the main* leaf tobacco warehouse of the manufacturer, and shall bear the same paragraph and assessment number as the L.-? register book. All leaf tobacco in whatever form received in any factory warehouse or factory, and any removals of tobacco from the factory proper shall be credited out of the proper official bale book. In a like manner all tobacco received in the factory or factory warehouse shall be debited in the bale book corresponding to the factory or warehouse.

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ALBERTO BARRETTO,
Secretary of Finance.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

DEPARTMENT OF FINANCE.

MANILA, August 17, 1921.

SUBJECT: *Income Tax Regulations.*

REGULATIONS NO. 20.[1]

To all internal revenue officers and others concerned:

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SEC. 20. *Need of inventories.*—There is no particular form prescribed for taking inventory, and the taxpayer should adopt such form which is not inconsistent with the business practice, provided the inventoried property is valued at cost. Inventories should be recorded in a legible manner and properly computed and summarized, and should be preserved as a part of the accounting records of the taxpayer. Goods taken in the inventory which have been so intermingled that they cannot be identified with specific invoices will be deemed to be the goods most recently purchased.

SEC. 3. For the purpose of the additional tax, the taxable income of any individual shall include the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, partnerships, joint-accounts (*cuentas en participación*), associations or insurance companies however created or organized, when such gains or profits have been fraudulently accumulated or retained for the purpose of evading the payment of the additional tax upon them; and the fact that any such corporation, joint-stock company, partnership, joint-account (*cuentas en participación*), association, or insurance company, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape

[1]Promulgated February 11, 1922, XX Off. Gaz., 18, page 323.

the said tax in such case unless the Secretary of Finance shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Collector of Internal Revenue such corporation, joint-stock company, partnership, joint-account (*cuentas en participación*), association, or insurance company shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed.

SEC. 4. The following incomes shall be exempt from the provisions of this Law:

(*a*) The proceeds of life insurance policies paid to beneficiaries upon the death of the insured.

(*b*) The amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(*c*) The value of property acquired by gift, bequest, devise, or descent, but the income from such property shall be included as income.

(*d*) Interest upon the obligations of the United States to the extent provided in the Act authorizing the issue thereof; interest upon the obligations of the Government of the Philippine Islands or any political subdivision thereof, but in the case of such obligations issued after January first, nineteen hundred and nineteen, only to the extent provided in the Act authorizing the issue thereof.

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SEC. 55. *Methods of accounting.*—It is recognized that no uniform method of accounting can be prescribed for all taxpayers, and the law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his judgment best suited to his purposes. For the purpose of the foregoing subsection of the law, any approved standard method of accounting will ordinarily be regarded as clearly reflecting the taxpayer's income.

SEC. 9 (*a*) All assessments shall be made by the Collector of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in cases of refusal or neglect to make such return and in cases of erroneous, false, or fraudulent returns, in which cases the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this Law or by existing law, or require the necessary corrections to be made, and the assessment made by the

Collector of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth *day of* June in any year, and for ten days after notice and demand thereof by the Collector, there shall be added the sum of five per centum on the amount of tax unpaid, and interest at the rate of one per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

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SEC. 99. *Methods of accounting.*—Taxpayers coming under the foregoing provision of law may make their returns of annual net income on the basis of the accounts kept by them, provided the systems of accounting adopted by them clearly and correctly reflect their net income for each calendar or fiscal year.

SEC. 13. (*c*) All the provisions of this Law relating to the tax required to be deducted and withheld and paid to the internal revenue officer authorized to receive the same from the income of nonresident alien individuals from sources within the Philippine Islands shall be made applicable to the tax imposed by subdivision (*a*) of section ten upon the income described in subsection (*b*) of section nine, obtained by nonresident alien firms, copartnerships, companies, corporations, joint-stock companies, partnerships, and insurance companies, not engaged in business or trade within the Philippine Islands and not having any office or place of business therein.

SEC. 13. (*f*) Likewise, all the provisions of this Law relating to the tax required to be deducted and withheld and paid to the officer of the Government of the Philippine Islands authorized to receive the same from the income of nonresident alien individuals from sources within the Philippine Islands shall be made applicable to income derived from dividends upon the capital stock or from the net earnings of domestic or other resident corporations, joint-stock companies, partnerships, joint-accounts (*cuentas en participación*), associations, and insurance companies by nonresident alien firms, corporations, joint-stock companies, partnerships, joint-accounts (*cuentas en participación*), associations, and insurance companies, not enaged in business or trade within the Philippine Islands and not having any office or place of business therein.

SEC. 14. (*a*) All assessments shall be made by the Collector of Internal Revenue, and the several corporations, joint-stock companies, partnerships, joint-accounts (*cuentas en participación*), associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each year, and said assessment shall be paid on or before the fifteenth day of June: *Provided*, That every corporation, joint-stock company, partnership, joint-account (*cuenta en participación*), association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and five

days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, in which cases the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is made or due, make a return upon information obtained as provided for in this Law or by existing law or require the return made to be corrected and the assessment made by the Collector of Internal Revenue thereon shall be paid by such corporation, joint-stock company, partnership, joint-account (*cuenta en participación*), association, or insurance company immediately upon notification of the amount of such assessment; and to the tax due and unpaid after the fifteenth day of June of any year, or after one hundred and five days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the Collector, there shall be added five per centum on the amount and interest at the rate of one per centum per month upon the said tax, from the time the same becomes due: *Provided*, That upon the examination of any return of income made pursuant to this Law, if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayers shall be permitted to present a claim for refund thereof.

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MIGUEL UNSON,
Acting Secretary of Finance.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

DEPARTMENT OF FINANCE

MANILA, *August 10, 1922*

Subject: Revised Regulations and Instructions Governing the Business of Manufacturers of Cigars and Cigarettes and Chewing and Smoking Tobacco

REGULATIONS No. 27[1]

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SEC. 10. (*a*) *Register, auxiliary register, and stamp requisition books for manufacturers.*—The Collector of Internal Revenue shall from time to time supply provincial treasurers with the necessary number of manufacturers' official register books and official auxiliary register books as may be required in each locality by manufacturers of tobacco products. Whenever any manufacturer shall have qualified himself as such by executing a proper bond, registering his factory, and paying the privilege tax

[1]Promulgated March 1, 1923, XXI Off. Gaz. 26, page 460.

and shall have complied with all the requirements for engaging in such business contained in the Internal Revenue Law and in these regulations, the internal revenue agent within whose district the factory is located shall deliver to said manufacturer the necessary official register books and auxiliary register books. These books consist in the following:

B. I. R. No. 16.—Official Register Book, A-3, for manufacturers of chewing and smoking tobacco—"manufactured tobacco." (B. I. R. No. 22.—Transcript sheet of above.)

B. I. R. No. 17.—Official Register Book, A-4, for manufacturers of cigars. (B. I. R. No. 23.—Transcript sheet of above.)

B. I. R. No. 18.—Official Register Book, A-5, for manufacturers of cigarettes. (B. I. R. No. 24.—Transcript sheet of above.)

B. I. R. No. 281.—Official Register Book, L-7, record of raw materials, for manufacturers of any class of tobacco products. (B. I. R. No. 282.—Transcript sheet of above.)

B. I. R. No. 268.—Auxiliary Register Book, L-7½, bale book, for manufacturers of any class of tobacco products. (B. I. R. No. 269.—Transcript sheet of above.)

B. I. R. No. 60 *A*.—Stamp requisition Book, for manufacturers of manufactured tobacco.

B. I. R. No. 60 *B*.—Stamp requisition Book, for manufacturers of cigars.

B. I. R. No. 60 *C*.—Stamp requisition Book, for manufacturers of cigarettes.

B. I. R. No. 283.—L-7 Official Invoice Book, for use in connection with L-7 register book.

B. I. R. No. 283.—L-7½ Official Invoice Book, for use in connection with L-7½ bale book.

(b) *General nature of official register and auxiliary register books.*—The L–7 official register book is the record of all raw materials used in the manufacture of tobacco products of all description in the factory. It is the primary record of the internal operations of the factory. It shows the raw materials used in the manufacture and the articles actually manufactured or produced. The Schedule A register books are the records of the articles actually manufactured or produced, and transferred from the credit side of the official register book, L–7. They show the amount of taxes paid and the name of the person to whom the finished product is consigned or sold when leaving the factory. The bale book, L–7½, is an auxiliary to the L–7 official register book.

All official register books and other official records herein required of manufacturers shall be kept on the factory premises, or

in the factory warehouse, in the case of bale books, and open to inspection by any internal revenue officer at all times of day or night.

(c) Preliminary steps; entries to be made on fly leaf of official register, auxiliary register and other official books.—There shall be entered on the fly leaf of each official register book or auxiliary register book at the time of delivery to the manufacturer the date of delivery of the book, the name of the owner of the factory and of the manager thereof, and a declaration or certificate signed by the owner or manager, attested by the internal revenue agent delivering the book, to the effect that all the provisions of the law and regulations governing the operations of his factory, the use of said official book, and the manner of stamping, marking, and shipping of goods from the factory, have been fully explained to such manufacturer or manager; that he fully understands the same and knows the penalties and punishments imposed for the disregard thereof, and promising strict compliance therwith. One copy of this declaration or certificate shall be forwarded to the Collector of Internal Revenue, another transmitted to the provincial treasurer through the deputy provincial treasurer and a third one shall remain permanently in the register book.

SEC. 11. *Entries to be made in the official register and auxiliary register books; monthly transcripts.—(a) Official bale book (L–7½).*—All leaf tobacco received in any factory warehouse or factory, and any removals of tobacco from the factory proper shall be credited in the official bale book; except cuttings, clippings, sweepings, and other partially manufactured tobacco, which shall be credited in the L–7 register book. In a like manner all tobacco received in the factory or factory warehouse shall be debited in the bale book corresponding to the factory or warehouse.

The Collector of Internal Revenue may in his discretion waive the requirement of keeping an official bale book by small factories.

(b) The official register book (L–7).—One L–7 book shall suffice for each manufacturer of tobacco products, regardless of the classes of tobacco manufactured by him. All loose leaf tobacco received in the factory proper and all bales of leaf tobacco which are opened in the factory for use in the manufacture of tobacco products shall be entered in the L–7 official register book under

the heading "Received from dealers" at the net weights. In the column headed "Name" and "Address" shall be shown the words "Transferred from tobacco factory warehouse." All leaf tobacco received into a factory must be entered in the official bale book pertaining to the factory and bales of leaf tobacco shall not be taken up in the L–7 register book until said bales are transferred for use and credited in the official bale book. While leaf tobacco must be taken up in the official bale book, this is done for statistical purposes only. As soon as it enters the factory for use in manufacture it should be taken up in the L–7 register book and credited in the official bale book.

All removals of waste of tobacco, whether transferred to other factories, removed for agricultural or industrial purposes, or destroyed on the premises or elsewhere, shall be entered in the official register book, L–7, under the heading "Raw materials removed," showing all information required therein.

(c) Quantity of products; wholesale price.—Immediately after operations have commenced in a new factory the owner or manager of the factory under the supervision of the internal revenue agent shall proceed, in the manner hereinafter provided, to determine the number of each brand of cigars and cigarettes and quantity of each brand of smoking and chewing tobacco that can be produced from 1 kilo of leaf. After such figures have been ascertained and entered in their proper order in the manufacturer's declaration they shall be entered in the column provided on the production sheet in the L–7 register. Under each brand shall also be shown the manufacturer's wholesale price of the brand. If a new brand is added the name of such brand shall be written in red ink during the first month.

(d) Schedule A register books.—At the time of the original assessment of each and every factory there shall be entered on the "Debit" side of each official register book, as the first item therein and in the proper columns, a description of all stocks of goods subject to the tax on hand on the date of said assessment. Every manufacturer shall also, at the close of the day's business, on such days as his factory is in operation, enter in said register on the "Debit" side and in the proper columns thereof the day and number of hours worked, the kind and quantity of amount of articles

produced and a statement of the denominative values, serial numbers, quantity and total value of internal revenue stamps purchased on that day. At the time of any removal of goods, he shall immediately enter in his register book on the "Credit" side thereof and in the proper columns a full description of said goods, including the day and hour of removal, the denominative value, serial numbers, and quantity of internal revenue stamps affixed to every container, the contents thereof by the count, or measurement or the quantity used, the total value of the stamps affixed to the containers, and the name and address of the consignee or purchaser. All tobacco products manufactured shall be shown daily in the corresponding actual production sheet, and in case a factory has been closed for one or more days, entry shall be made in the register books, "Factory closed from....., 19....., to ....., 19....." This entry shall be made immediately upon reopening the factory for business. He shall sign or initial each entry made, whether on the "Debit" or "Credit" side as aforesaid of said register book, at the close of the day's business, and shall at the foot of each page certify to the truth and completeness of all entries made therein.

(e) Monthly transcript sheets to be rendered.—Every manufacturer shall promptly at the end of each month and not later than the eighth day of the next succeeding month make and present to the deputy provincial treasurer of the municipality within which his factory is situated, a true and exact transcript of all entries made on both the "Credit" and "Debit" sides of his register books and auxiliary register books during the month last past, and shall strike a balance in each such book and on said transcript sheets, showing the balance of stock on hand, if any, and said balance of stock shall be carried over as the first entry for the next succeeding month on the "Debit" side of said register book. Each manufacturer shall at the foot of each transcript sheet certify to the truth and completeness of all of the entries therein, and that they are exact copies of the original entries contained in his official register book. When any internal revenue officer is required to make entries of any kind in an official register book or other class of books for which transcript sheets are required to be rendered, such entries shall be made in a legible

manner and the manufacturer or dealer shall make a correct copy of same on his transcript sheets before sending them in at the end of the month. The transcript forms provided for above shall be identical in form with the debit and credit pages of the manufacturers' official register books and will be supplied by the Collector of Internal Revenue to manufacturers through the respective deputy provincial treasurers to whom said transcript sheets shall be presented not later than the eighth day of the next succeeding month. Before signing them, the local deputy provincial treasurers shall insert or stamp thereon the date of presentation of the transcript sheets, after which the manufacturers shall forward them direct to the Collector of Internal Revenue.

SEC. 12. *(a) Invoice books and stubs.*—Each manufacturer of tobacco products shall keep an official invoice book (B. I. R. Form No. 283) to correspond with each bale book (L–7½) and his official register book (L–7) from which he shall issue an invoice containing all the data specified thereon to cover each removal or sale of tobacco made by him. Such invoice or guia shall at all times accompany the goods which it covers and shall be attached to the bill of lading if the goods are shipped by rail or boat. Whenever nontaxpaid domestic tobacco in any form is found unaccompanied by such invoice or guia, the fact that it is so unaccompanied shall be *prima facie* evidence that such tobacco is unlawfully in the possession of its holder, and the tobacco shall be seized or embargoed by any internal revenue agent or officer who finds it so unaccompanied. A record of each Schedule L invoice issued shall be made on the corresponding notification and record stub before the invoice shall be detached, and the notification stubs of all invoices issued shall be delivered not later than the day following the date of their issue (Sundays and holidays excepted) to the deputy provincial treasurer of the municipality in which the factory is situated.

(b) Manufacturers must give sufficient address on L–7 invoice and notification stubs.—Manufacturers shall not issue L–7 or L–7½ invoice with an insufficient or indefinite address. When by reason of its insufficiency or indefiniteness an internal revenue officer is unable to locate the person to whom issued, he shall require the manufacturer to make out a substitute invoice (B. I. R. Form

No. 97) which shall be sworn to by said manufacturer and shall have affixed thereto a 20-centavo documentary stamp.

SEC. 13. *Treatment of fractions of a kilo.*—Except as otherwise provided in this chapter, in recording transactions in the official register book, L–7, the manufacturer shall, when the net weight is not in even kilos, eliminate the fraction; if such fraction amounts to 500 grams or more by treating it as 1 kilo; if less than 500 grams by dropping it altogether. Example: 1,742.500 kilos should be expressed as 1,743 kilos; 1,742.497 kilos should be expressed as 1,742 kilos. But in the "Production sheet for manufactured tobacco," the fractions shall be entered for the production of packages daily, eliminating the fractions as above provided when carrying the total forward to the résumé at the end of each month, or at any time when account of stock is taken.

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SEC. 23. *Completion of register books.*—When all pages of the official register books have been filled, the balance in the completed register shall be carried forward to the new register. The delinquency record will also be removed from the completed register by an internal revenue agent or agent's assistant and transferred to the one newly installed, and the following note made in the old register:

"Delinquency record transferred to second (third, fourth, etc.) book ...., 19.....

"

"Internal Revenue Officer."

Every person required to pay specific tax will be held responsible for the proper preservation of all completed registers and auxiliary register books and of all delinquency indexes and shall hold same subject to the call of any internal revenue officer. When a tobacco manufacturer retires from business he shall secure a certificate, to be executed by an internal revenue officer on the last used page of his register, to the effect that all transcript sheets have been duly rendered and the register book properly closed.

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ALBERTO BARRETTO,
Secretary of Finance.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

DEPARTMENT OF FINANCE

MANILA, *September 2, 1922.*

Subject: Amendment to Regulations No. 20 (Income Tax Regulations)

REGULATIONS NO. 29[1]

SECTION 1. In order to make the Income Tax Regulations conform with the provisions of Act No. 3026, amending section 2 (*d*) of the Income Tax Law, section 20 of the same Regulations (Regulations No. 20) is hereby amended so as to read as follows:

Section 2 (d) of Act No. 2833 as amended.—Whenever in the judgment of the Collector of Internal Revenue the use of inventories is necessary in order to determine clearly the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Collector of Internal Revenue with the approval of the Secretary of Finance may prescribe, as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

SEC. 20. (*a*) *Need of inventories.*—In order to reflect the net income correctly, inventories at the beginning and end of each year are necessary in every case in which the production, purchase, or sale of merchandise is an income-producing factor. The inventory should include raw materials and supplies on hand that have been acquired for sale, consumption or use in productive processes, together with all finished or partly finished goods. Only merchandise title to which is vested in the taxpayer should be included in the inventory. Accordingly the seller should include in his inventory goods under contract for sale but not yet segregated and applied to the contract and goods out upon consignment, but should exclude from inventory goods sold, title to which has passed to the purchaser. A purchaser should include in inventory merchandise purchased, title to which has passed to him although such merchandise is in transit or for other reasons has not been reduced to physical possession, but should not include goods ordered for future delivery transfer of title to which has not yet been effected.

SEC. 20. (*b*) *Valuation of inventories.*—The law provides two tests to which each inventory must conform—(1) It must conform as nearly as possible to the best accounting practice in the trade or business, and (2) it must clearly reflect the income. It follows, therefore, that inventory rules can not be uniform but must give effect to trade customs which come within the scope of the best accounting practice in the particular trade or business. In order to clearly reflect

[1]Promulgated October 20, 1923, XXI Off. Gaz., 126, page 2589.

income, the inventory practice of a taxpayer should be consistent from year to year, and greater weight is to be given to consistency than to any particular method of inventorying or basis of valuation, as long as the method or basis used is substantially in accord with these regulations. An inventory that can be used under the best accounting practice in a balance sheet showing the financial position of the taxpayer is, as a general rule, regarded as clearly reflecting his income.

The basis of valuation most commonly used by business concerns and which meets the requirements of the Income Tax Law is (*a*) cost price or (*b*) market price. (For inventories by dealers in securities, *see* section 20 (*c*).) Any goods in an inventory which are unsalable at normal prices or unusable in the normal way because of damage, imperfections, shop wear, changes of style, odd or broken lots, or other similar causes, including second hand goods taken in exchange, should be valued at *bona fide* selling prices whether basis (*a*) or (*b*) is used, or if such goods consist of raw materials or partly finished goods held for use or consumption, they should be valued upon a reasonable basis, taking into consideration the usability and the condition of the goods, but in no case shall such value be less than the scrap value. *Bona fide* selling price means actual offerings of goods during a period ending not later than thirty days after inventory date. The burden of proof will rest upon the taxpayer to show that such exceptional goods as are valued upon such selling basis come within the classifications indicated above and he shall maintain such records of the disposition of the goods as will enable a verification of the inventory to be made.

In respect to normal goods, whichever basis (*a*) or (*b*) is adopted must be applied with reasonable consistency to the entire inventory. Taxpayers were given the option to adopt the basis of either (*a*) cost price or (*b*) market price, for their 1921 inventories, and the basis adopted for that year is controlling and a change can now be made only after permission is secured from the Collector of Internal Revenue. Goods taken in the inventory which have been so intermingled that they can not be identified with specific invoices will be deemed to be either (*a*) the goods most recently purchased or produced and the cost thereof will be the actual cost of the goods purchased or produced during the period in which the quantity of goods in the inventory has been acquired, or (*b*) where the taxpayer maintains book inventories in accordance with a sound accounting system in which the respective inventory accounts are charged with the actual cost of the goods purchased or produced and credited with the value of the goods used, transferred or sold, calculated upon the basis of the actual cost of the goods acquired during the taxable year (including the inventory at the beginning of the year), the net value as shown by such inventory accounts will be deemed to be the cost of the goods on hand. The balances shown by such book inventories should be verified by physical inventories at reasonable intervals and adjusted to conform therewith.

Inventories should be recorded in a legible manner, properly computed and summarized, and should be preserved as a part of the accounting record of the taxpayer. The inventories of taxpayers on whatever basis taken will be subject to investigation by the Collector of Internal Revenue and the taxpayer must satisfy the Collector of Internal Revenue of the correctness of the price adopted.

The following methods, among others, that are sometimes used in taking or valuing inventories, are not in accord with these regulations and therefore their use for income tax purposes is prohibited, viz:

(*a*) Deducting from the inventory a reserve for price changes, or an estimated depreciation in the value thereof.

(*b*) Taking work in process, or other parts of the inventory, at a nominal price or at less than its proper value.

(*c*) Omitting portions of the stock on hand.

(*d*) Using a constant price or nominal value for a so-called normal quantity of materials or goods in stock.

(*e*) Including stock in transit, either shipped to or from the taxpayer, the title of which is not vested in the taxpayer.

SEC. 20. (*c*) *Inventories at cost price.*—Cost means:

(1) In the case of merchandise on hand at the beginning of the taxable year, the inventory price of such goods.

(2) In the case of merchandise purchased since the beginning of the taxable year, the invoice price less trade or other discounts, except strictly cash discounts, approximating a fair interest rate, which may be deducted or not at the option of the taxpayer, provided a consistent course is followed. To this net invoice price should be added transportation or other necessary charges incurred in acquiring possession of the goods.

(3) In the case of merchandise produced by the taxpayer since the beginning of the taxable year, (*a*) the cost of raw materials and supplies entering into or consumed in connection with the product; (*b*) expenditures for direct labor; (*c*) indirect expenses incident to and necessary for the production of the particular article, including therein indirect expenses, a reasonable proportion of management expenses, but not including any cost of selling or return on capital whether by way of interest or profit.

(4) In any industry in which the usual rules for computation of cost of production are inapplicable, costs may be approximated upon such basis as may be reasonable and in conformity with established trade practice in the particular industry. Among such cases are: (*a*) Farmers and raisers of live stock (*see* section 20 (*f*); (*b*) miners and manufacturers who by a single process or uniform series of processes derive a product of two or more kinds, size or grade, the unit cost of which is substantially alike (*see* section 20 (*g*); and (*c*) retail merchants who use what is known as the "retail method" in ascertaining approximate cost (*see* section 20 (*h*)).

SEC. 20. (*d*) *Inventories at market price.*—Under ordinary circumstances, and for normal goods in an inventory, "market" means the current bid price prevailing at the date of the inventory for the

particular merchandise in the volume in which usually purchased by the taxpayer, and is applicable in the cases (*a*) of goods purchased and on hand, and (*b*) of basic elements of cost (materials, labor and burden) in goods in process of manufacture and in finished goods on hand; exclusive, however, of goods on hand or in process of manufacture for delivery upon firm sales contracts (i. e., those not legally subject to cancellation by either party) at fixed prices entered into before the date of the inventory, which goods must be inventoried at cost. Where no open market exists or where quotations are nominal due to stagnant market conditions, the taxpayer must use such evidence of a fair market price at the date or dates nearest the inventory as may be available, such as specific purchases or sales by the taxpayer or others in reasonable volume and made in good faith, or compensation paid for cancellation of contracts for purchase commitments. Where the taxpayer in the regular course of business has offered for sale such merchandise at prices lower than the current price as above defined, the inventory may be valued at such prices and the correctness of such prices will be determined by reference to the actual sales of the taxpayer for a reasonable period before and after the date of the inventory. Prices which vary materially from the actual prices so ascertained will not be accepted as reflecting the market.

SEC. 20. (*c*) *Inventories by dealers in securities.*—A dealer in securities, who in his books of account regularly inventories unsold securities on hand either (*a*) at cost or (*b*) market, may make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be adhered to in subsequent years, unless another be authorized by the Collector of Internal Revenue. For the purpose of this rule a dealer in securities is a merchant of securities, whether an individual, partnership, or corporation, with an established place of business, regularly engaged in the purchase of securities and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived thereform. If such business is simply a branch of the activities carried on by such person, the securities inventoried as here provided may include only those held for purpose of resale and not for investment. Taxpayers who buy and sell or hold securities for investment or speculation, and not in the course of an established business, and officers of corporations and members of partnerships who in their individual capacities buy and sell securities, are not dealers in securities within the meaning of this rule.

SEC. 20. (*f*) *Inventories of live-stock raisers and other farmers.*—(1) Farmers may change the basis of their returns from that of receipts and disbursements to that of an inventory basis, which necessitates the use of opening and closing inventories for the year in which the change is made. There should be included in the opening inventory all farm products (including live stock) purchased

or raised which were on hand at the date of the inventory, but inventories must not include real estate, buildings, permanent improvements or any other fixed assets.

(2) Because of the difficulty of ascertaining actual cost of live stock and other farm products, farmers who render their returns upon an inventory basis may at their option value their inventories for the current taxable year according to the "farm-price method" which provides for the valuation of inventories at market price less cost of marketing. If the use of the "farm-price method" of valuing inventories for any taxable year involves a change in method of pricing inventories from that employed in prior years, the opening inventory for the taxable year in which the change is made should be brought in at the same value as the closing inventory for the preceding taxable year. If such valuation of the opening inventory for the taxable year in which the change is made results in an abnormally large income for that year, there may be submitted with the return for such taxable year an adjustment statement for the preceding year based on the "farm-price method" of valuing inventories; upon the amount of which adjustments the tax, if any be due, shall be assessed and paid at the rate of tax in effect for such preceding year.

(3) Where returns have been made in which the taxable net income has been computed upon incomplete inventories, the abnormality should be corrected by submitting with the return for the current taxable year a statement for the preceding year in which such adjustments shall be made as are necessary to bring the closing inventory for the preceding year into agreement with the opening complete inventory for the current taxable year.

SEC. 20. (*g*) *Inventories of miners and manufacturers.*—A taxpayer engaged in mining or manufacturing who by a single process or uniform series of processes derives a product of two or more kinds, sizes or grades, the unit cost of which is substantially alike, and who in conformity to a recognized trade practice allocates an amount of cost to each kind, size or grade of product which in the aggregate will absorb the total cost of production, may use such allocated cost as a basis for pricing inventories, provided such allocation bears a reasonable relation to the respective selling values of the different kinds of products.

SEC. 20. (*h*) *Inventories of retail merchants.*—Retail merchants who employ what is known as the "retail method" of pricing inventories may make their returns upon that basis, provided that the use of such method is designated upon the return, that accurate accounts are kept, and that such method is consistently adhered to unless a change is authorized by the Collector of Internal Revenue. Under this method the goods in the inventory are ordinarily priced at the selling prices and the total retail value of the goods in each department or of each class of goods is reduced to approximate cost by deducting the percentage which represents the difference between the retail selling value and the purchase price. This percentage is determined by departments of a store or by classes of

goods, and should represent as accurately as may be the amounts added to the cost prices of the goods to cover selling and other expenses of doing business and for the margin of profit. In computing the percentage above-mentioned, proper adjustment should be made for all mark ups and mark downs.

A taxpayer maintaining more than one department in his store or dealing in classes of goods carrying different percentages of gross profit should not use a percentage and profit based upon an average of his entire business but should compute and use in valuing his inventory the proper percentages for the respective departments or classes of goods.

SEC. 2. These regulations shall take effect after promulgation in the Official Gazette and will cover the 1921 and succeeding inventories.

MIGUEL UNSON,
Acting Secretary of Finance.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF FINANCE

MANILA, *February 20, 1923.*

Subject: Merchants' Books Regulations
REGULATION NO. 34[1]

To all internal revenue officers and others concerned:

SECTION 1. In accordance with the provisions of Act No. 2803 of the Philippine Legislature in connection with sections 1424 *(j)*, 1457, and 1459 of the Administrative Code, the following regulations, relative to the books and records to be kept by merchants, are hereby promulgated and shall supersede Circular Letter No. 467 of this Office together with all other rulings and circulars heretofore issued on the subject. They shall be known as "The Merchants' Books Regulations" or Regulations No. 34.

SEC. 2. *Records of sales.*—All merchants and manufacturers subject to the fixed and percentage taxes imposed by the Internal Revenue Law shall keep a book in which they shall enter every day in detail, each of their sales that amount to P50 or more, and the daily aggregate amount of sales that are less than P50 each, together with the name and address of each purchaser. Every merchant and manufacturer before using said book shall serially number its pages in a permanent and legible manner and shall present it to the local internal revenue agent or officer for approval. Cash sales and sales on credit shall be entered separately

[1]Promulgated March 15, 1923, XXI Off. Gaz., 32, page 566.

in this book within the period of twenty-four hours following the date on which they are made. If no sales are made on any date, then that fact shall be noted in the book within twenty-four hours under the corresponding date. The book prescribed herein shall be kept substantially as shown in the model below:

JANUARY 1, 1923

Article	Quantity	Value or selling price	Cash payment	Credit	Name and address of purchaser
Rice	1,000 kilos	P138.00	P100.00	P38.00	Manila Rice Company, 520 Juan Luna.
Galvanized iron roofing	100 sheets	350.00	150.00	200.00	Juan Medina, 1460 Azcarraga.
Total		488.00	250.00	238.00	

SEC. 3. *Records of purchases.*—In addition to the records of sales prescribed in the next preceding section, all merchants and manufacturers subject to the fixed and percentage taxes imposed in the Internal Revenue Law shall also keep a book in which they shall enter in detail the quantity of goods, articles, wares, or merchandise bought by them, the price paid therefor, the name and address of the vendor, and the date of purchase. Before using this book, every merchant and manufacturer shall serially number its pages in a permanent and legible manner and shall present it to the local internal revenue agent or officer for approval. Cash purchases as well as purchases made on credit shall be separately entered in this book within the same period as that required for entering sales in the book of sales. The book prescribed in this section shall be kept substantially in the following form:

JANUARY 1, 1923

Article	Quantity	Value or purchase price	Cash payment	Credit	Name and address of vendor.
Biscuits	1,000	P80.00	P50.00	P30.00	La Perla, No. 9 Plaza Santa Cruz.
Rubber tires	4	120.00	100.00	20.00	Pacific Commercial Company, Pacific Building.
Total		200.00	150.00	50.00	

SEC. 4. *Exemption from the use of internal revenue books.*—Any person or firm who keeps regular commercial books or account, in accordance with the standard system of accounting, reflecting all the data required for internal revenue tax purposes, are exempted from the requirements of these regulations.

SEC. 5. *Approval of books.*—The approval by internal revenue agent or officer of any book to be used for keping the record of sales or purchases as required in these regulations shall be evidenced by his indorsement on the inner side of the cover thereof in the following forms:

Approved for the purposes of Regulations No. 34 of the Department of Finance.

.....
Internal Revenue Officer.

Date.....

SEC. 6. *Books open to inspection of internal revenue officers.*—All the record books herein described, including regular commercial books of account, shall be kept at all times in the place of business of the taxpayer subject to inspection by any internal revenue officer and upon demand shall immediately be produced and submitted to such inspection. All entries in said books shall be made in ink in a neat and legible manner, and figures entered under all columns shall be added at the close of each month and the totals entered at the foot of the respective columns.

SEC. 7. *Effective date.*—These Regulations shall take effect upon their promulgation in the Official Gazette.

ALBERTO BARRETO,
Secretary of Finance.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

DEPARTMENT OF FINANCE

MANILA, *June 27, 1925*

Subject: Records of Sales to be Kept by Taxpayers Holding C-2, C-3, and C-4 Tax Receipts

REGULATIONS NO. 48[1]

To all internal revenue officers and others concerned:

SECTION 1. By authority of section 79 (*B*) and section 1424 (*j*) of the Administrative Code, both sections as amended, the following regulations, relative to the records to be kept by persons subject to the percentage tax under sections 1461, 1462, as amended by Act No. 3082, and 1463 of the Administrative Code, are hereby promulgated for the information and guidance of all concerned.

[1]Promulgated July 16, 1925, XXIII Off. Gaz., 85, page 1289.

SEC. 2. *Scope of regulations.*—Printers, publishers, lithographers; road, building, irrigation, artesian well, waterworks, and other construction work contractors; persons engaged in the installation of gas, or electric light, heat, or power; proprietors or operators of dockyards, telephone or telegraph lines or exchanges, broadcasting or wireless stations, steam laundries, dry cleaning or dyeing establishments, tailor shops, shops for the construction or repair of bicycles or vehicles of any kind, mechanical devices, instruments, apparatus, or furniture of any kind, sugar centrals, and rice mills; persons selling light, heat, or power; keepers of hotels, restaurants, cafés or refreshment parlors; warehousemen, stevedores, dressmakers, milliners, hatters, plumbers, smiths, house or sign painters, bookbinders; keepers of livery stables and garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers by land or water, subject to the tax imposed in sections 1461, 1462, as amended by Act No. 3082, and 1463 of the Administrative Code, shall keep a record book in which they shall enter the daily aggregate amount of receipts that are less than P50 each, and each receipt that amounts to P50 or more, together with the name and address of each customer.

SEC. 3. *Book subject to prior approval.*—Before a record book is used for the purpose indicated in the preceding section, the pages must be serially numbered in a permanent and legible manner and the book itself presented to an internal revenue officer for approval. If he approves the book, the internal revenue officer shall make the following authentication on the reverse side of the front cover:

Approved for the purposes of Regulations No. ....., for use by ....., holder of C— .

(Name of taxpayer)

.....
Internal Revenue Officer

.....
(Date)

SEC. 4. *What and when entries to be made.*—In this book the daily receipts shall be entered under the corresponding date within the next day following that in which the money was received. If no money is received on any day then that fact shall be noted in the book within the same period under the corresponding date.

All entries shall be made in ink or indelible pencil in a neat and legible manner, and all columns shall be correctly added at the close of each month and the totals entered at the foot of the respective columns.

SEC. 5. *Persons exempt from keeping this book.*—Persons who keep regular commercial books of account containing all the data herein prescribed shall not be subject to these Regulations.

SEC. 6. *Disposition and care of book.*—The record book herein described, including regular commercial books of account, shall be preserved for a period of five years, and shall be kept at all times in the place of business of the taxpayer, subject to inspection by any internal revenue officer, and upon demand shall immediately be produced and submitted to such inspection. Every page shall be preserved intact, and none shall be torn off or mutilated for any reason.

SEC. 7. *Penalty for violation.*—Any violation or failure to comply with any of the provisions of these Regulations will subject the guilty person to prosecution under section 2741 of the Administrative Code, which provides punishment by a fine of not more than ₱300 or by imprisonment for not more than six months, or both.

SEC. 8. Circular Letter No. 467 and all other circulars, orders, and regulations in conflict herewith are hereby repealed.

SEC. 9. These Regulations shall take effect thirty days after their promulgation in the Official Gazette.

MIGUEL UNSON,
Acting Secretary of Finance.

PAUL SHIPMAN ANDREWS,
Special Assistant to the Attorney General.

GUILLERMO B. GUEVARA,
Prosecuting Attorney for the City of Manila.

A. R. STALLINGS,
Lieut. Col., Judge Advocate.

CHARLES R. BRICE,
Capt., C. A. C.

GREGORY HANKIN,
Special Assistant to the Attorney General.

STANLEY SUYDAM,
Attorney.

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SUPREME COURT OF THE UNITED STATES.

No. 623.—October Term, 1925.

Yu Cong Eng and Co Liam, for themselves and for the benefit of all other persons similarly situated and affected, Petitioners,

vs.

W. Trinidad, as Collector of Internal Revenue, Eulogio P. Revilla, as Fiscal for the City of Manila, and Pedro Concepcion, as Judge of the Court of First Instance of Manila, Respondents.

On Writ of Error to the Supreme Court of the Philippines.

[June 7, 1926.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This case comes here on a writ of certiorari to review a decision of the Supreme Court of the Philippine Islands denying an original petition for prohibition against the enforcement by criminal prosecution of Act No. 2972 of the Philippine Legislature, known as the Chinese Bookkeeping Act, on the ground of its invalidity. The petitioner, Yu Cong Eng, was charged by information in the Court of First Instance of Manila, with its violation. He was arrested, his books were seized, and the trial was about to proceed when he and the other petitioner, Co Liam, on their own behalf, and on behalf of all the other Chinese merchants in the Philippines, filed the petition against the Fiscal, or Prosecuting Attorney of Manila, and the Collector of Internal Revenue engaged in the prosecution, and against the Judge presiding.

By the Code of Civil Procedure of the Philippine Islands, section 516, the Philippine Supreme Court is granted concurrent jurisdiction in prohibition with courts of first instance over inferior tribunals or persons, and original jurisdiction over courts

of first instance, when such courts are exercising functions without or in excess of their jurisdiction. It has been held by that court that the question of the validity of a criminal statute must usually be raised by a defendant in the trial court and be carried regularly in review to the Supreme Court. *Cadwallader-Gibson Lumber Company* v. *Del Rosario*, 26 Philippine Reports, 192. But in this case where a new Act seriously affected numerous persons and extensive property rights, and was likely to cause a multiplicity of actions, the Supreme Court exercised its discretion to bring the issue of the Act's validity promptly before it and decide it in the interest of the orderly administration of justice. The Court relied by analogy upon the cases of *Ex parte Young*, 209 U. S. 123; *Truax* v. *Raich*, 239 U. S. 33; and *Wilson* v. *New*, 243 U. S. 332. Although objection to the jurisdiction was raised by demurrer to the petition, this is now disclaimed on behalf of the respondents, and both parties ask a decision on the merits. In view of broad powers in prohibition granted to that court under the Island Code, we acquiesce in the desire of the parties.

Act No. 2972, the validity of which is attacked, was passed by the Philippine Legislature, and approved February 21, 1921. It reads as follows:

"No. 2972. An Act to provide in what languages account books shall be kept, and to establish penalties for its violation.

"Be it enacted by the Senate and House of Representatives of the Philippines in legislature assembled and by the authority of the same:

"Section 1. It shall be unlawful for any person, company or partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

"Section 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years, or both.

"Section 3. This Act shall take effect on November 1st, Nineteen Hundred and Twenty-One."

This was amended as to its date by a subsequent act and it did not take effect until January 1st, 1923. Various efforts were made to repeal the Act or amend it, but they were defeated.

The petition, after setting out the prosecution in the court of first instance, and the text of the Act, avers that the petitioner, Yu Cong Eng is a Chinese merchant engaged in the wholesale lumber business in Manila; that he neither reads, writes nor understands the English or Spanish language or any local dialect; that he keeps the books of account of his business in Chinese characters; that by reason of his ignorance of the English and Spanish languages and of all local dialects he is unable to keep his books in any other language than his own; that even if he should employ a bookkeeper capable of keeping his books in the English or Spanish language, he would have no means of personally revising or ascertaining the contents or correctness of the books thus kept; that the employment of such a bookkeeper, unless he should be a linguist, would entail as a necessary consequence the employment of a translator or interpreter familiar with the Chinese language and the language or dialect in which such books might be kept in order to enable the petitioner to ascertain by hearsay the contents thereof; that he would be completely at the mercy of such employees, who if dishonest might cheat and defraud him of the proceeds of his business, and involve him in criminal or civil liability in its conduct; that under the provisions of the Act he is prohibited from even keeping a duplicate set of accounts in his own language, and would, in the event of the enforcement of the law, be compelled to remain in total ignorance of the status of his business; and that the enforcement of the Act would drive the petitioner and many other Chinese merchants in the Philippines who do sixty per cent. of the business of the Islands and who are in like circumstance, out of business.

The petition avers that the other petitioner in this case, Co Liam, is a Chinese person and conducts a small general merchandise business in Manila, commonly known in the Philippines as a Chinese tienda; that he carries a stock of goods of about 10,000 pesos, or $5,000; that his sales taxes amount to from 40 to 60 pesos per quarter; that he neither reads, writes nor understands the English or Spanish language or any local dialect; that he keeps books of account of his small business in Chinese, the only language known to him, without the assistance of a bookkeeper; that he has been losing money for sometime in the operation of his business, but that even in prosperous times his profits could never

be sufficient to justify the employment of a Filipino bookkeeper, and that without the opportunity to keep Chinese books, he would be kept completely ignorant of the changing condition of his business, were he compelled to keep his books in English, Spanish or a local dialect, and that the enforcement of the Act would drive him and all the small merchants or tienda keepers in the Islands who are Chinese out of business.

The petitioners aver that the Act, if enforced, will deprive the petitioners and the twelve thousand Chinese merchants whom they represent, of their liberty and property without due process of law, and deny them the equal protection of the laws, in violation of the Philippine Autonomy Act of Congress of August 29, 1916, c. 416, sec. 3, 39 Stat. 546.

An amendment to the petition set up the rights of the petitioners under the treaty now in force between the United States and China, alleging that under it the petitioners are entitled to the same rights, privileges and immunities as the citizens and subjects of Great Britain and Spain, and that the treaty has the force and effect of a law of Congress, which this law violates.

An answer was filed by the Fiscal, which is a general denial of the averments of the petition as to the effect of the law. He avers that the law is valid and necessary and is only the exercise of proper legislative power, because the government of the Philippine Islands depends upon the taxes and imposts which it may collect in order to carry out its functions and the determination of whether the mercantile operations of the merchants are or are not subject to taxation, as well as the fixing of its amount can not and ought not to be left to the mercy of those who are to bear it; that due to the inability of the officials of the Internal Revenue to revise and check up properly the correctness of the books of account which the Chinese merchants keep in their own language, the public treasury loses every year very large sums.

Evidence was taken on the issues made. A majority of the Supreme Court held that if the Act were construed and enforced literally, it would probably be invalid, but by giving it an interpretation different from the usual meaning of the words employed, it could stand. Two of the justices dissented, on the ground that the court had exceeded its powers and by legislation made it a different Act.

There are two tax laws from which a substantial part of the revenue of the Islands is derived. There is a sales tax of 1½ per cent. on the gross sales of businesses and occupations for which a quarterly return is required. Administrative Code, sections 1453, etc., Act 3065. There is also an income tax. The annual revenue accruing from the sales tax is roughly ten million pesos, and that from the income tax about two millions.

Another statute is the so-called Code of Commerce brought over from the Spanish Code, the 33d Article of which provides that all merchants shall keep a book of inventories and balances, a day book, a ledger, a copy book of telegrams, letters, etc., and such other books as may be required by special laws. Under the provisions of that code and the internal revenue law, the collector of internal revenue is authorized to require the keeping of daily records of sales, and makes regulations prescribing the manner in which the proper books, invoices and other papers should be kept and entries made therein by the persons subject to the sales tax. R. 1164, Act No. 2339, sections 5, 6; Administrative Code, section 1424(j).

Chinese merchants are said to have been in the Philippines even before the arrival of the Spaniards in 1520. The Chinese written language is an ancient language with a literature and with characters quite different from those used in European languages. There are many different native dialects in the Philippines. Forty-three is said to be the number; but there are less than a dozen of these which may be regarded as important—the Tagalog, the Visayan, with two distinct main dialects, the Ilocano, the Bical, the Pampangan, the Ibanag, the Pangasananian and the Moro. Perhaps from 7 to 10 per cent. of the Filipinos speak Spanish. A great many (how large the percentage one can not tell) of the younger people in the Islands speak English. It is a polyglot situation, and presents many difficulties in government. Comparatively few of the Chinese speak English or Spanish or the native dialects with any facility at all, and less are able to write or to read either. But with capacity and persistence in trade, by signs and by a patois, they communicate with the Filipinos and others with whom they do business, making their calculations with the abacus, an instrument for mechanical calculation, and keeping their books in Chinese characters in ink, applied by a

brush to strong paper, securely bound. They have a scientific system of double entry bookkeeping.

There are 85,000 merchants in the Philippines to whom the bookkeeping law applies. Of these, 71,000 are Filipinos who may use their own dialects; 1,500 are Americans, or British or Spanish subjects; 500 are of other foreign nationalities, most of whom know the Spanish or English language. The remainder, some 12,000 in number, are Chinese. The aggregate commercial business transacted by these is about sixty per cent. of the total business done by all the merchants in the Islands. The total amount of their sales in 1923 was more than 320 billions of pesos, distributed among 3,335 wholesale merchants, of whom 50 did a business of a million pesos each, 150 of half a million each, 400 of one hundred thousand each, and 2,735 of forty thousand each. There were 8,445 retail merchants whose annual incomes on the average would not exceed 500 pesos each. In 1913, certain revenue statistics were reported by the then collector of internal revenue to the Court of First Instance in the case of *Young* v. *Rafferty*, 33 Philippine Reports, 556, in which the validity of an order by the Collector requiring the keeping of certain books by tax payers in Spanish and English was at issue. The figures given above are based on this report. The report showed that Chinese merchants paid about 60 per cent. of the taxes, but this is now in dispute and evidence was introduced by the present Collector to show that the proportion of taxes paid by them in 1918 and 1922 was much less and that examination of the books of four hundred Chinese tax payers showed a very considerable loss probably due to evasion and fraud.

The evidence of the president of the largest company in the Philippine Islands, an American who has been twenty-one years in business in the Philippines, as to the business activities of the Chinese, was accepted by the court below as reliable. He says that the Chinese system of distribution covers the Philippine Islands through the medium of middlemen in the principal centers, and then by the small Chinese storekeepers throughout the Islands, extending even to the remotest barrios or small settlements. The Chinese are the principal distributing factors in the Philippines of imported goods and the principal gatherers of goods for exportation in the same remote places. He said that

if they were driven out of business there would be no other system of distribution available throughout the Islands, for the reason that there are not Filipino merchants sufficiently numerous with resources and experience to provide a substitute.

The Chinese Consul General testified that not more than eight Chinese merchants in the Islands can read or write proficiently in any other language than Chinese, and that the great majority of them could not comply with the Act. The merchants' establishments are made up of young Chinese persons who come from China, begin at the beginning and are promoted from time to time to become the head of the business. The books are always kept in the Chinese language, and each Chinese establishment is completely separated from the native mode of living.

Apparently there has always been some complaint in respect to the avoidance of taxes by the Chinese because of the difficulty of determining what their sales tax should be. There has always been a sales tax in the Philippines. It is a method of taxation to which the people are used. Dr. Pardo de Tavera, the Philippine Librarian and Historian, testified in this case that efforts to enforce such a law as this in the Spanish times against the Chinese failed and became a dead letter. Governor General Harrison made a general recommendation looking to a law requiring the Chinese to keep books in other than Chinese language so that their business might be investigated, saying that until it was done, taxes would be evaded. Since the passage of the law in 1921, as already said, its enforcement has been postponed. Governor General Wood has sought to have the law repealed or changed in such a way that exceptions might be made to it, or that the books of the Chinese should be kept on stamped paper with the pages registered, for the purpose of making it difficult for the Chinese tax payer to change the records of his business. Protests from the Chinese Government, from members of the Insular Committee of the House of Representatives, from Chambers of Commerce in the United States and elsewhere were brought to the attention of the Philippine Legislature, and the repeal or modification of the law came up for discussion, but all proposed changes were defeated. The great weight of the evidence sustains the view that the enforcement by criminal punishment of an inhibition against the keeping of any Chinese books of account by Chinese

merchants in the Islands would seriously embarrass all of them and would drive out of business a great number.

Nor is there any doubt that the Act as a fiscal measure was chiefly directed against the Chinese merchants. The discussion over its repeal in the Philippine Legislature leaves no doubt on this point. So far as the other merchants in the Islands are concerned, its results would be negligible and would operate without especial burden on other classes of foreign residents. The Supreme Court in its opinion in this case refers to the Act as popularly known as the Chinese Bookkeeping Act.

Evidence was introduced on behalf of the defendants to show the difficulty of securing competent Chinese bookkeepers who could act as inspectors of Chinese books for the tax collecting authorities, and while the failure of the government to employ a sufficient number was charged to the fact that sufficient salaries were not paid to secure them, it is undoubtedly true that a lack of proper and reliable Chinese accountants presents a real difficulty in the examination of Chinese merchants' books.

The majority of the Philippine Court in its opinion, after quoting a number of authorities showing the duty of a court in determining whether a law is unconstitutional or not, first to give every intendment possible to its validity, and second to reach a reasonable construction by which it may be preserved, said:

"We come to the last question suggested, a construction of Act No. 2972 which allows the court legally to approve it.

"A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional.

"A second interpretation is that the Chinese merchant, while permitted to keep his books of account in Chinese, must also keep another set of books in either English, Spanish or a native dialect. The respondents claim the law is susceptible of such construction. It occurs to us, however, that this construction might prove as unsatisfactory as the first. Fraud is possible in any language. As approximation to governmental convenience and an approximation to equality in taxation is the most which may be expected.

"A third construction which is permissible in view of the history of the legislation and the wording of the statute, is that the law only intended to require the keeping of such books as were neces-

sary in order to facilitate governmental inspection for tax purposes. It has not escaped our notice that the law does not specify what books shall be kept. It is stated by competent witnesses that a cash book, a journal, and a ledger are indispensable books of account for an efficient system of accounting, and that, in the smaller shops, even simpler entries showing merely the daily records of sales and record of purchases of merchandise would be sufficient. The keeping of records of sales, and possibly further records of purchases, in English, Spanish or a native dialect, and the filling out of the necessary forms would serve the purpose of the Government while not being oppressive. Actually, notations in English, Spanish or a dialect of all sales in sales books, and of data in other specified forms are insisted upon by the Bureau of Internal Revenue, although as appears from Exhibit 2, it is doubtful if all Chinese merchants have complied with these regulations. The faithful observance of such rules by the Chinese is not far removed from the offer of cooperation oft made for them by the petitioners of the 'translation of the account books' oft mentioned and explained by the respondents.

"The law, in speaking of any person, company, partnership or corporation, makes use of the expression 'its account books.' Does the phrase 'its account books' mean that all the account books of the person, company, partnership or corporation must be kept exclusively in English, Spanish or any local dialect? The petitioners argue that the law has this meaning. Or does the phrase 'its account books' mean that the persons, company, partnership or corporation shall keep duplicate sets of account books, one set in Chinese and the other a translation into English, Spanish or any local dialect? Counsel for the respondents urge this construction of the law upon the court. Or does the phrase 'its account books' mean that the person, company, partnership or corporation must keep such account books as are necessary for taxation purposes? This latter interpretation occurs to us as a reasonable one and as best safeguarding the rights of the accused."

The Court in effect concludes that what the Legislature meant to do was to require the keeping of such account books in English, Spanish or the Filipino dialects as would be reasonably adapted to the needs of the taxing officers in preventing and detecting evasion of taxes, and that this might be determined from the statutes and regulations then in force. What the court really does is to change the law from one which by its plain terms forbids the Chinese merchants to keep their account books in any language except English, Spanish or the Filipino dialects, and thus forbids them to keep account books in the Chinese, into a law re-

quiring them to keep certain undefined books in the permitted languages. This is to change a penal prohibitive law to a mandatory law of great indefiniteness to conform to what the Court assumes was, or ought to have been, the purpose of the Legislature, and which in the change would avoid a conflict with constitutional restriction.

It would seem to us from the history of the legislation and the efforts for its repeal or amendment, that the Philippine Legislature knew the meaning of the words it used, and intended that the Act as passed should be prohibitory and should forbid the Chinese merchants from keeping the account books of their business in Chinese. Had the Legislature intended only what the Supreme Court has construed it to mean, why should it not have amended it accordingly? Apparently the Legislature thought the danger to the revenue was in the secrecy of the Chinese books, and additional books in the permitted languages would not solve the difficulty.

We fully concede that it is the duty of a court in considering the validity of an act to give it such reasonable construction as can be reached to bring it within the fundamental law. But it is very clear that amendment may not be substituted for construction and that a court may not exercise legislative functions to save the law from conflict with constitutional limitation.

One of the strongest reasons for not making this law a nose of wax to be changed from that which the plain language imports, is the fact that it is a highly penal statute authorizing sentence of one convicted under it to a fine of not more than 10,000 pesos, or by imprisonment for not more than two years, or both. If we change it to meet the needs suggested by other laws and fiscal regulations and by the supposed general purpose of the legislation, we are creating by construction a vague requirement, and one objectionable in a criminal statute. We are likely thus to trespass on the provision of the Bill of Rights that the accused is entitled to demand the nature and cause of the accusation against him, and to violate the principle that a statute which requires the doing of an act so indefinitely described that men must guess at its meaning, violates due process of law. *Connally v. Construction Company,* decided January 4, 1926; *United States* v. *Cohen Grocery Company,* 255 U. S. 81; *International Harvester Co.* v. *Kentucky,* 234 U. S. 216; *United States* v. *Reese,* 92 U. S. 214, 219.

The main objection to the construction given to the Act by the Court below is that in making the Act indefinitely mandatory instead of broadly prohibitory it creates a restriction upon its operation to make it valid that is not in any way suggested by its language. In several cases this Court has pointed out that such strained construction in order to make a law conform to a constitutional limitation can not be sustained.

In *United States* v. *Reese,* 92 U. S. 214, the question for decision arose on a demurrer to an indictment against inspectors of municipal election for refusing to receive and count the vote of a colored man. The power of Congress to forbid such an act was confined under the Fifteenth Amendment to a refusal to receive such a vote from a colored man on account of his race, color or previous condition of servitude, but the section under which the indictment was brought did not specifically confine the offense to a refusal for such a reason or to such discrimination, although in previous sections of the Act there was a general purpose disclosed in the Act to enforce the Fifteenth Amendment. The demurrer was sustained on the ground that the section was invalid.

Chief Justice Waite, in delivering the opinion of the Court, said at p. 221:

"We are therefore directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question then to be determined is whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large.

This would, to some extent, substitute the judicial for the legislative department of the government."

And again the Chief Justice said:

"To limit this statute in the manner now asked for would be to make a new law, not to enforce the old one. This is no part of our duty."

The same principle was laid down, and this language approved by this Court in the *Trade Mark Cases*, 100 U. S. 82, in which, to save the validity of a general statute providing for trade marks, the Court was asked to construe the statute to apply only to trade marks in interstate commerce. It was held this could not be done. Mr. Justice Miller, speaking for the Court, at p. 98, said:

"It has been suggested that if Congress has power to regulate trade-marks used in commerce with foreign nations and among the several States, these statutes shall be held valid in that class of cases, if no further. To this there are two objections: First, the indictments in these cases do not show that the trade-marks, which are wrongfully used were trade-marks used in that kind of commerce. Secondly, while it may be true that when one part of a statute is valid and constitutional, and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable so that each can stand alone, it is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear in order that crimes may be punished which are not described in language that brings them within the constitutional power of that body."

The case of *Butts* v. *Merchants and Miners Transportation Company*, 230 U. S. 126, concerned the application of the Civil Rights Act of March 1, 1875 to vessels of the United States engaged in the coastwise trade. In the *Civil Rights Cases*, 109 U. S. 3, it was held that the Civil Rights Act of 1875, to protect all citizens in their civil and legal rights, and in accordance with the terms of which a defendant was indicted for denying the privileges and accommodations of a theater in a State to a person on account of her color, was unconstitutional because power to enact and enforce such legislation in a State was in the state legislature only. The declaration in the *Butts* case was brought to recover penalties for violation of the Act against a corporation engaged in the transportation of passengers and freight between

Boston, Mass., and Norfolk, Va., and the discrimination occurred on the high seas and in the jurisdiction of the United States, and not within any State. It was contended that the Federal Civil Rights Act could, therefore, apply in such a case. The Court pointed out the all-inclusive words of the Act of Congress and held that they could not be cut down to include only what was strictly within the Federal jurisdiction. The Court said:

"Only by reason of the general words indicative of the intended uniformity can it be said that there was a purpose to embrace American vessels upon the high seas, the District of Columbia and the Territories. But how can the manifest purpose to establish an uniform law for the entire jurisdiction of the United States be converted into a purpose to create a law for only a small fraction of that jurisdiction? How can the use of the general terms denoting an intention to enact a law which should be applicable alike in all places within that jurisdiction be said to indicate a purpose to make a law which should be applicable to a minor part of that jurisdiction and inapplicable to the major part? Besides, it is not to be forgotten that the intended law is both penal and criminal." Citing the case of *United States* v. *Reese*, and the *Trade Mark Cases, supra*, as well as *United States* v. *Harris*, 106 U. S. 629, 642; *Baldwin* v. *Franks*, 120 U. S. 678, 685; *James* v. *Bowman*, 190 U. S. 127, 140; *United States* v. *Ju Toy*, 198 U. S. 253, 262; *Illinois Central Railroad Co.* v. *McKendree*, 203 U. S. 514, 529-530; *Karem* v. *United States*, 121 Fed. 250, 259.

The effect of the authorities we have quoted is clear to the point that we may not in a criminal statute reduce its generally inclusive terms so as to limit its application to only that class of cases which it was within the power of the legislature to enact, and thus save the statute from invalidity. What it is proposed to do here is much more radical, for it is to ignore and hold for naught a plain prohibition of the keeping of account books in Chinese and insert in the act an affirmative requirement that account books not definitely determined which are adapted to the needs of the taxing officials be kept in the permitted languages. This is quite beyond the judicial power.

The suggestion has been made in argument that we should accept the construction put upon a statute of the Philippine Islands by their Supreme Court as we would the construction of a state court in passing upon the federal constitutionality of a state statute. The analogy is not complete. The Philippines are within the

exclusive jurisdiction of the United States Government, with complete power of legislation in Congress over them, and when the interpretation of a Philippine statute comes before us for review, we may if there be need therefor re-examine it for ourselves as the court of last resort on such a question. It is very true that with respect to questions turning on questions of local law, or those properly affected by custom inherited from the centuries of Spanish control, we defer much to the judgment of the Philippine or Porto Rican courts. *Cami* v. *Central Victoria, Ltd.*, 268 U. S. 469; *Diaz* v. *Gonzales*, 261 U. S. 102. But on questions of statutory construction as of the Philippine Code of Procedure adopted by the United States Philippine Commission, this Court may exercise an independent judgment. In *Philippine Sugar Co.* v. *Philippine Islands*, 247 U. S. 385, involving the effect of Section 285 of that Code, this Court said at p. 390:

"It is also urged that since the construction of sec. 285 is a matter of purely local concern, we should not disturb the decision of the Supreme Court of the Philippine Islands. This Court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. Phoenix Ry. Co. *v.* Landis, 231 U. S. 578. But that disposition may not be yielded to where the lower court has clearly erred. Carrington *v.* United States, 208 U. S."

The question of applying American constitutional limitations to a Philippine or Porto Rican statute dealing with the rights of persons living under the government established by the United States, is not a local one, especially when the persons affected are subjects of another sovereignty with which the United States has made a treaty promising to make every effort to protect their rights. The fundamental law we administer in the Philippine bill of rights was a marked change from that which prevailed in the Islands before we took them over and is to be enforced in the light of the construction by this Court of such limitations as it has recognized since the foundation of our own government. In its application here, we must determine for ourselves the necessary meaning of a statute officially enacted in English and its conformity with fundamental limitations.

We can not give any other meaning to the Bookkeeping Act than that which its plain language imports, making it a crime for any one in the Philippine Islands engaged in business to keep

his account books in Chinese. This brings us to the question whether the law thus construed to mean what it says is invalid.

The Philippine Bill of Rights, already referred to, provides that

"No law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

In *Serra* v. *Mortiga*, 204 U. S. 470, at 474, this Court said:

"It is settled that by virtue of the bill of rights enacted by Congress for the Philippine Islands, 32 Stat. 691, 692, that guarantees equivalent to the due process and equal protection of the law clause of the Fourteenth Amendment, the twice in jeopardy clause of the Fifth Amendment, and the substantial guarantees of the Sixth Amendment, exclusive of the right to trial by jury, were extended to the Philippine Islands. It is further settled that the guarantees which Congress has extended to the Philippine Islands are to be interpreted as meaning what the like provisions meant at the time when Congress made them applicable to the Philippine Islands. Kepner *v.* United States, 195 U. S. 100.

"For the purpose, therefore, of passing on the errors assigned we must test the correctness of the action of the court below by substantially the same criteria which we would apply to a case arising in the United States and controlled by the bill of rights expressed in the amendments to the Constitution of the United States."

In view of the history of the Islands and of the conditions there prevailing, we think the law to be invalid, because it deprives Chinese persons situated as they are, with their extensive and important business long established, of their liberty and property without due process of law, and denies them the equal protection of the laws.

Of course the Philippine Government may make every reasonable requirement of its taxpayers to keep proper records of their business transactions in English or Spanish or Filipino dialect by which an adequate measure of what is due from them in meeting the cost of government can be had. How detailed those records should be, we need not now discuss, for it is not before us. But we are clearly of opinion that it is not within the police power of the Philippine Legislature, because it would be oppressive and arbitrary, to prohibit all Chinese merchants from maintaining a set of books in the Chinese language, and in the Chinese char-

acters, and thus prevent them from keeping advised of the status of their business and directing its conduct. As the petitioner, Yu Cong Eng, well said in his examination, the Chinese books of those merchants who know only Chinese and do not know English and Spanish (and they constitute a very large majority of all of them in the Islands,) are their eyes in respect of their business. Without them such merchants would be a prey to all kinds of fraud and without possibility of adopting any safe policy. It would greatly and disastrously curtail their liberty of action, and be oppressive and damaging in the preservation of their property. We agree with the Philippine Supreme Court in thinking that the statute construed as we think it must be construed is invalid.

In *Lawton* v. *Steele*, 152 U. S. 133, 137, the Court said:

"To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, requires such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

In *Holden* v. *Hardy*, 169 U. S. 366, 398, the Court said:

"The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class."

In the case of *Meyer* v. *Nebraska*, 262 U. S. 390, this Court considered the validity of state legislation making it unlawful to teach a foreign language to children, adopted on the theory that the State had the right to protect children likely to become citizens from study of a particular language, in which they might read and learn doctrine inimical to the Constitution of the United States and to the Nation, and forbidding the teachers of the language from pursuing their occupation on this account and held it invalid. The court said:

"While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. With-

out doubt it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the comon occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. . . . The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts."

The same principle is laid down in *Pierce* v. *Society of Sisters*, 268 U. S. 510, in *Truax* v. *Raich*, 239 U. S. 33, and in *Adams* v. *Tanner*, 244 U. S. 590, in which this Court has held legislative attempts arbitrarily and oppressively to interfere with the liberty of the individual in the pursuit of lawful occupations to involve a lack of due process.

In *Adams* v. *Tanner, supra*, an Act to restrict the maintenance of employment agencies by forbidding the collection of fees from those seeking work, to avoid the extortion to which such workers were often subjected, was held unconstitutional. The Court said at p. 594:

"Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices, and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution can not be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

In *Truax* v. *Raich, supra*, the people of the State of Arizona adopted an Act, entitled "An Act to protect the citizens of the United States in their employment against non-citizens of the United States", and provided that an employer of more than five workers

at any one time in that State should not employ less than 80 per cent. of the qualified electors or native born citizens, and that any employer who did so should be subject upon conviction to the payment of a fine and imprisonment. It was held that such a law denied aliens an opportunity of earning a livelihood and deprived them of their liberty without due process of law, and denied them the equal protection of the laws. As against the Chinese merchants of the Philippines, we think the present law which deprives them of something indispensable to the carrying on of their business, and is obviously intended chiefly to affect them as distinguished from the rest of the community, is a denial to them of the equal protection of the laws.

We hold the law in question to be invalid.

Judgment reversed.

A true copy.

Test

Clerk, Supreme Court, U. S.